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PRECISION VALVE & AUTOMATION, INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RUBEN JUAREZ, an individual and
ISELA HERNANDEZ, an individual,

Plaintiffs,

PRECISION VALVE &
AUTOMATION, INC., a corporation
and DOES 1-20,

Defendants.

CASE NO. CV17-03342-ODW (GJSX)
[L.A.S.C. Case No. BC650229]

**DEFENDANT PRECISION VALVE &
AUTOMATION, INC.'S OBJECTIONS
TO EVIDENCE IN SUPPORT MOTION
FOR SUMMARY JUDGMENT**

Date: October 1, 2018
Time: 1:30 p.m.
Ctrm: 5D, 5th Floor
Judge: Hon. Otis D. Wright II

Pursuant to this Court's Scheduling and Case Management Order dated July 5, 2017 [Doc. 14], subsection 6(f)(iii)¹ defendant Precision Valve & Automation, Inc. ("PVA") respectfully submits the following Objections to Evidence in support of its Motion For Summary Judgment.

¹ PVA's evidentiary objections track the paragraph numbers of plaintiffs' Separate Statement in sequence as required by this Court's July 5, 2017 order.

OBJECTIONS TO EVIDENCE

Separate Statement Paragraph 3: Objection to the Declaration of Ruben Juarez and deposition excerpt which lacks necessary foundation. The machine is referred to as a “work cell” in PVA’s manual and the conformal coating industry. (UF 3.) Plaintiff has no foundation to dispute this terminology because he never read the manual, and the fact that he used different terminology in the aerospace industry to refer to the machine is irrelevant. Whether the machine is also a “stand alone machine” is irrelevant. Fed. R. Evid. (“FRE”) 401, 402, 602.

Separate Statement Paragraph 7: Objection to evidence that “a number of safety items are not included *automatically*” in the PVA 350 which is irrelevant. None of the listed evidence negates the fact that when it was sold, the PVA 350 would shut down if its exhaust did not run at a rate of 150 cubic feet per minute or greater. The undisputed evidence shows that the PVA 350 at issue in this case included a camera, flow monitoring, door interlocks and other safety features when it was sold. (UF 12; Urquhart Dec., 2:23-3:6, 21, 86, 99, 130.) Dr. Stevick also has no foundation to state how the PVA 350 was configured when it was sold to SpaceX in 2009. To the extent that any purported features mentioned were “safety features” were altered or removed after it was sold is irrelevant to plaintiff’s negligence and product liability claims against PVA.

Dr. Stevick’s opinions are also irrelevant because plaintiffs do not make these product defect claims in the complaint. Their sole claim in the complaint, which was the basis for PVA’s motion for summary judgment, was that the PVA 350 lacked a warning that the machine was “designed to continue to spray chemicals even when the ventilation/exhaust is not in operation.” (Catalona Dec., 58:22-25.) If they had alleged that other safety features could have avoided plaintiff’s alleged injuries, PVA would have addressed them in its motion for summary judgment. For example, Dr. Stevick states without basis that the PVA 350 did not have a camera. When it was sold, the machine did have a camera had a “slim programming camera with crosshair

generator.” (Urquhart Dec., 12, 16.) Plaintiffs’ new allegations which vary from the complaint are irrelevant and may not defeat summary judgment. *Navajo Nation v. U.S. Forest Serv.*, 535 F.3d 1058, 1080 (9th Cir. 2008) (prohibiting oppositions to summary judgment motions based on factual theories not alleged in the complaint.) FRE 401, 402, 602.

Separate Statement Paragraph 8: Objection that none of the listed evidence alters the fact that when it was sold, the PVA 350 would shut down if its exhaust did not run at a rate of 150 cubic feet per minute or greater. Plaintiff has no foundation to testify how the PVA 350 was equipped in 2009. This evidence and plaintiffs’ characterization of this evidence is misleading, argumentative and irrelevant. FRE 401, 402, 403, 602.

Separate Statement Paragraph 9: Objection that none of the listed evidence alters the fact that when it was sold, the PVA 350 was a “closed door system with a door and negative air pressure to prevent chemicals from escaping.” Plaintiff has no foundation to testify how the PVA 350 was equipped in 2009. This evidence and plaintiffs’ characterization of this evidence is misleading, argumentative and irrelevant. FRE 401, 402, 403, 602.

Separate Statement Paragraph 10: Objection that none of the listed evidence alters the fact that when it was sold, the spraying of chemicals would stop when the machine was opened and the “door bypass switch” or “bypass system” did not shut off any safety features or allow them to be “bypassed.” (UF 12; Urquhart Dec., 2:23-3:10, 21, 86, 99, 130.) Plaintiff and Dr. Stevick have no foundation to testify how the PVA 350 was equipped in 2009. Notably, Dr. Stevick has never examined or tested the machine at issue in this case, or any PVA 350 in any way. (Stevick Dec., 3:15-17.) Plaintiffs’ characterization of PVA’s evidence is misleading, argumentative and irrelevant. FRE 401, 402, 403, 602.

Separate Statement Paragraph 11: Objection that none of the listed evidence alters the fact that when it was sold, the spraying of chemicals would stop when the

1 machine was opened and the “door bypass switch” or “bypass system” did not shut off
 2 any safety features or allow them to be “bypassed.” (UF 12; Urquhart Dec., 2:23-3:10,
 3 21, 86, 99, 130.) Plaintiff and Dr. Stevick have no foundation to testify how the PVA
 4 350 was equipped in 2009. Notably, Dr. Stevick has never examined or tested the
 5 machine at issue in this case, or any PVA 350 in any way. (Stevick Dec., 3:15-17.)
 6 Plaintiffs’ characterization of PVA’s evidence is misleading, argumentative and
 7 irrelevant. Plaintiffs do not explain what being “equipped with a positive or negative
 8 air pressure system” which is not supported or explained. FRE 401, 402, 403, 602.

9 **Separate Statement Paragraph 12:** Objection that none of the listed evidence
 10 alters the fact that when it was sold, the spraying of chemicals would stop when the
 11 machine was opened and the “door bypass switch” or “bypass system” did not shut off
 12 any safety features or allow them to be “bypassed.” (UF 12; Urquhart Dec., 2:23-3:10,
 13 21, 86, 99, 130.) Plaintiff and Dr. Stevick have no foundation to testify how the PVA
 14 350 was equipped in 2009. Notably, Dr. Stevick has never examined or tested the
 15 machine at issue in this case, or any PVA 350 in any way. (Stevick Dec., 3:15-17.)
 16 Plaintiffs’ characterization of PVA’s evidence is misleading, argumentative and
 17 irrelevant. The fact that PVA had several safety options is irrelevant; none of
 18 plaintiffs’ evidence related to these options is relevant to the PVA 350 at issue in this
 19 case. FRE 401, 402, 403, 602.

20 **Separate Statement Paragraph 13:** Objection that none of plaintiffs’ listed
 21 evidence is relevant to what is stated in the PVA manual. It is also irrelevant that the
 22 manual was not uploaded to plaintiff’s computer because it undisputed that it was
 23 maintained at SpaceX’s “Hawthorne campus” and plaintiff only need to ask for it. (UF
 24 26; Hwang Dec., 1:15-17.) He never asked for it and there is no explanation why. (UF
 25 16; Pl. Sep. Stmt., 79:5-7.) FRE 401, 402.

26 **Separate Statement Paragraph 14:** Objection that none of plaintiffs’ listed
 27 evidence is relevant to what is stated in the PVA manual. It is also irrelevant that the
 28 manual was not uploaded to plaintiff’s computer because it undisputed that it was

1 maintained at SpaceX's "Hawthorne campus" and plaintiff only need to ask for it. (UF
 2 26; Hwang Dec., 1:15-17.) He never asked for it and there is no explanation why. (UF
 3 16; Pl. Sep. Stmt., 79:5-7.) FRE 401, 402.

4 **Separate Statement Paragraph 15:** Objection that none of plaintiffs' listed
 5 evidence is relevant to what is stated in the PVA manual. It is also irrelevant that the
 6 manual was not uploaded to plaintiff's computer because it undisputed that it was
 7 maintained at SpaceX's "Hawthorne campus" and plaintiff only need to ask for it. (UF
 8 26; Hwang Dec., 1:15-17.) He never asked for it and there is no explanation why. (UF
 9 16; Pl. Sep. Stmt., 79:5-7.) FRE 401, 402.

10 **Separate Statement Paragraph 16:** Objection that none of plaintiffs' listed evidence
 11 is relevant to what plaintiff's deposition testimony which remains undisputed.
 12 Notably, there is no dispute that PVA's manual was in fact available at SpaceX's
 13 campus because Mr. Juarez admitted he could not say if it was or was not available at
 14 his deposition:

15
 16 Q. Do you know if it was available or not?

17 A. You're asking me to speculate.

18 Q. I don't want you to speculate. If you don't know –

19 A. You're asking me –

20 Q. – just say "I don't know."

21 A. I did say I don't know. You keep asking me the same question. *Do you*
 22 *know if it was available. I said I don't know.*

23 (Catalona Dec., 292:18-293:3 (emphasis added).) It is also irrelevant that the manual
 24 was not uploaded to plaintiff's computer because it undisputed that it was maintained
 25 at SpaceX's "Hawthorne campus" and plaintiff only need to ask for it. (UF 26; Hwang
 26 Dec., 1:15-17.) He never asked for it and there is no explanation why. (UF 16; Pl.
 27 Sep. Stmt., 79:5-7.) FRE 401, 402.

28 **Separate Statement Paragraph 18:** Objection to the Mendoza declaration

1 which lacks foundation and contain speculation. Plaintiffs are “not allowed to use”
 2 Mr. Mendoza “to supply evidence on a motion” because he was not disclosed in
 3 plaintiffs’ Rule 26 disclosures, in response to PVA’s interrogatory or when plaintiff
 4 was asked to identify plaintiff’s coworkers at his deposition and plaintiffs have not met
 5 their burden of establishing that this nondisclosure was substantially justified or
 6 harmless. F.R.C.P. 37(c)(1); *Benjamin v. B&H Education, Inc.*, 877 F.3d 1139, 1150
 7 (9th Cir. 2017); *Medina v. Multaler, Inc.*, 547 F.Supp. 1099, 1106, fn. 8 (C.D. Cal.
 8 2007).

9 **Separate Statement Paragraph 19:** Juarez in his declaration does not address
 10 or deny that this design team worked together to create the conformal coating material.
 11 Objection to the unsupported suggestion that because he did not have “chemistry
 12 training” he “was not allowed to mix chemical compounds.” There is no evidence that
 13 mixing chemical compounds required chemistry training. His statements are also
 14 contradicted by his sworn deposition testimony that he mixed separate chemicals to
 15 create different compounds as part of his job, including Arathane and Humiseal
 16 materials:

17 Q. On the list given, there I something called thinner 527. Do you know
 18 what that is?

19 A. It’s a – can be used as a cleaning agent, or it’s also for coating purposes.

20 Q. Did you work with this chemical?

21 A. Yes.

22 Q. When?

23 A. Through my time with SpaceX.

24 * * * * *

25 Q. The next item is described as Humiseal 1A33 conformal coating. Is that
 26 coding or coating?

27 A. Coating.

28 * * * * *

1 Q. Do you wear gloves when you use this product?

2 A. You have to.

3 Q. Gloves are always worn. Okay.

4 Is it applied to the machine?

5 A. You have to fill up the canister, *mix the formula of thinner, the one we*
6 *talked about before and this.* You have to adjust the thickness.

7 (Juarez Depo., March 30, 2015, Catalona Dec., 448:22-449:4, 458:14-459:8
8 (emphasis added).)

9 Q. Which of these chemicals on the MSDS sheets did you use in connection
10 with the PVA 350?

11 A. The Humiseal, Arathane, that's it.

12 * * * * *

13 Q. So the Arathane 5750B(LV) is part of the PVA 350?

14 A. 57 A/B. Part A and part B.

15 * * * * *

16 Q. Oh, okay. The only Arathane you used was A/B; correct?

17 A. As far as I remember, there was only one Arathane, A/B, part A and part
18 B. That's it.

19 Q. And were there two parts to that, or was it one substance that was called
20 Arathane 5750 A/B?

21 A. No. They were *separate chemicals that when you mixed, they would start*
22 *to cure rather quickly.*

23 Q. And the two chemicals *you mixed* were part A and part B.

24 A. *Correct.*

25 (Juarez Depo., March 8, 2018, Catalona Dec., 268:1-3, 268:15-17, 269:8-18 (emphasis
26 added).) No reasonable jury could believe plaintiff's explanation for this contradiction
27 which is that his prior testimony only meant that he mixed a "single container" of
28 chemicals. (Juarez Dec., 5:26.) This does not make sense because he testified at his

1 deposition that he mixed the Humiseal conformal coating material with the Humiseal
 2 thinner that “we talked about before,” and also that he had to mix Arathane Part A with
 3 Arathane part B which were “separate chemicals” that “would start to cure rather
 4 quickly” when mixed. (Catalona Dec., 269:10-15, 459:5-8.)

5 Objection to the Mendoza and Gutierrez declarations which lack foundation and
 6 contain speculation. Plaintiffs are “not allowed to use” these witnesses “to supply
 7 evidence on a motion” because he was not disclosed in plaintiffs’ Rule 26 disclosures,
 8 in response to PVA’s interrogatory or when plaintiff was asked to identify plaintiff’s
 9 coworkers at his deposition and plaintiffs have not met their burden of establishing that
 10 this nondisclosure was substantially justified or harmless. F.R.C.P. 37(c)(1); *Benjamin*
 11 *v. B&H Education, Inc.*, 877 F.3d 1139, 1150 (9th Cir. 2017); *Medina v. Multaler, Inc.*,
 12 547 F.Supp. 1099, 1106, fn. 8 (C.D. Cal. 2007).

13 Also irrelevant is the fact that these witnesses “never saw Ruben Juarez mix
 14 chemicals.” Mendoza and Gutierrez have no foundation to testify about plaintiff’s
 15 “hand mixing” of chemicals because they were not part of the team that designed
 16 SpaceX’s conformal coating formula in 2012. (UF 19-20; Maxwell Dec., 2:21-23.)
 17 FRE 401, 402, 403, 602.

18 **Separate Statement Paragraph 20:** Juarez in his declaration does not address
 19 or deny that this design team worked together to create the conformal coating material.
 20 Objection to the unsupported suggestion that because he did not have “chemistry
 21 training” he “was not allowed to mix chemical compounds.” There is no evidence that
 22 mixing chemical compounds required chemistry training. His statements are also
 23 contradicted by his sworn deposition testimony that he mixed separate chemicals to
 24 create different compounds as part of his job, including Arathane and Humiseal
 25 materials. (*See excerpts of testimony, infra*, Juarez Depo., March 30, 2015, Catalona
 26 Dec., 448:22-449:4, 458:14-459:8; Juarez Depo., March 8, 2018, Catalona Dec.,
 27 268:1-3, 268:15-17, 269:8-18.) No reasonable jury could believe plaintiff’s
 28 explanation for this contradiction which is that his prior testimony only meant that he

1 mixed a “single container” of chemicals. (Juarez Dec., 5:26.) This does not make
 2 sense because he testified at his deposition that he mixed the Humiseal conformal
 3 coating material with the Humiseal thinner that “we talked about before,” and also that
 4 he had to mix Arathane Part A with Arathane part B which were “separate chemicals”
 5 that “would start to cure rather quickly” when mixed. (Catalona Dec., 269:10-15,
 6 459:5-8.)

7 Objection to the Mendoza and Gutierrez declarations which lack foundation and
 8 contain speculation. Plaintiffs are “not allowed to use” these witnesses “to supply
 9 evidence on a motion” because he was not disclosed in plaintiffs’ Rule 26 disclosures,
 10 in response to PVA’s interrogatory or when plaintiff was asked to identify plaintiff’s
 11 coworkers at his deposition and plaintiffs have not met their burden of establishing that
 12 this nondisclosure was substantially justified or harmless. F.R.C.P. 37(c)(1); *Benjamin*
 13 *v. B&H Education, Inc.*, 877 F.3d 1139, 1150 (9th Cir. 2017); *Medina v. Multaler, Inc.*,
 14 547 F.Supp. 1099, 1106, fn. 8 (C.D. Cal. 2007).

15 Also irrelevant is the fact that these witnesses “never saw Ruben Juarez mix
 16 chemicals.” Mendoza and Gutierrez have no foundation to testify about plaintiff’s
 17 “hand mixing” of chemicals because they were not part of the team that designed
 18 SpaceX’s conformal coating formula in 2012. (UF 19-20; Maxwell Dec., 2:21-23.)
 19 FRE 401, 402, 403, 602.

20 **Separate Statement Paragraph 21:** Juarez in his declaration does not address
 21 or deny that this design team worked together to create the conformal coating material.
 22 Objection to the unsupported suggestion that because he did not have “chemistry
 23 training” he “was not allowed to mix chemical compounds.” There is no evidence that
 24 mixing chemical compounds required chemistry training. His statements are also
 25 contradicted by his sworn deposition testimony that he mixed separate chemicals to
 26 create different compounds as part of his job, including Arathane and Humiseal
 27 materials. (*See excerpts of testimony, infra*, Juarez Depo., March 30, 2015, Catalona
 28 Dec., 448:22-449:4, 458:14-459:8; Juarez Depo., March 8, 2018, Catalona Dec.,

1 268:1-3, 268:15-17, 269:8-18.) No reasonable jury could believe plaintiff's
 2 explanation for this contradiction which is that his prior testimony only meant that he
 3 mixed a "single container" of chemicals. (Juarez Dec., 5:26.) This does not make
 4 sense because he testified at his deposition that he mixed the Humiseal conformal
 5 coating material with the Humiseal thinner that "we talked about before," and also that
 6 he had to mix Arathane Part A with Arathane part B which were "separate chemicals"
 7 that "would start to cure rather quickly" when mixed. (Catalona Dec., 269:10-15,
 8 459:5-8.)

9 Objection to the Mendoza and Gutierrez declarations which lack foundation and
 10 contain speculation. Plaintiffs are "not allowed to use" these witnesses "to supply
 11 evidence on a motion" because he was not disclosed in plaintiffs' Rule 26 disclosures,
 12 in response to PVA's interrogatory or when plaintiff was asked to identify plaintiff's
 13 coworkers at his deposition and plaintiffs have not met their burden of establishing that
 14 this nondisclosure was substantially justified or harmless. F.R.C.P. 37(c)(1); *Benjamin*
 15 *v. B&H Education, Inc.*, 877 F.3d 1139, 1150 (9th Cir. 2017); *Medina v. Multaler, Inc.*,
 16 547 F.Supp. 1099, 1106, fn. 8 (C.D. Cal. 2007).

17 Also irrelevant is the fact that these witnesses "never saw Ruben Juarez mix
 18 chemicals." Mendoza and Gutierrez have no foundation to testify about plaintiff's
 19 "hand mixing" of chemicals because they were not part of the team that designed
 20 SpaceX's conformal coating formula in 2012. (UF 19-20; Maxwell Dec., 2:21-23.)
 21 FRE 401, 402, 403, 602.

22 **Separate Statement Paragraph 22:** Irrelevant and misleading. Whether he
 23 was provided with an SOP specifically "for programmers" for "any assembly area" is
 24 irrelevant because SpaceX did not have any such SOPs. The undisputed evidence
 25 shows he did receive the SOP that is relevant to this case, for "Polymeric Application
 26 on Electronic Assemblies." This SOP which PVA submitted with its motion for
 27 summary judgment was used by the entire Avionics department and contained
 28 SpaceX's instructions for operating PVA's machine. (Juarez Dec., 6:10-11; Hwang

1 Dec., 1:25-26.) When asked directly about this particular SOP at his deposition,
 2 plaintiff testified that he had “no idea” what a “Standard Operating Procedure” or
 3 “SOP” even was, and could not remember ever receiving *any* written instructions from
 4 SpaceX. (Catalona Dec., 282:17-25, 283:25-284:5.) Critically, plaintiffs have put
 5 forward no evidence that negates the relevant SOP that required Juarez to program the
 6 PVA 350 according to “the operating instructions in the PVA manual.” (UF 25;
 7 Hwang Dec., 11.) Also irrelevant that Mr. Sotelo “laughed at him.”

8 Objection to the Mendoza and Gutierrez declarations which lack foundation and
 9 contain speculation. Plaintiffs are “not allowed to use” either witness “to supply
 10 evidence on a motion” because they were not disclosed in plaintiffs’ Rule 26
 11 disclosures, in response to PVA’s interrogatory or when asked to identify plaintiff’s
 12 coworkers at his deposition and plaintiffs have not met their burden of establishing that
 13 this nondisclosure was substantially justified or harmless. (F.R.C.P. 37(c)(1);
 14 *Benjamin v. B&H Education, Inc.*, 877 F.3d 1139, 1150 (9th Cir. 2017); *Medina v.*
 15 *Multaler, Inc.*, 547 F.Supp. 1099, 1106, fn. 8 (C.D. Cal. 2007). Mr. Gutierrez only
 16 overlapped with Mr. Juarez during an unidentified portion of 2012 and cannot say
 17 what SpaceX was like during the majority of Juarez’s job history. Mr. Mendoza is
 18 unable to testify that he worked with Ruben Juarez at any time or ever saw him
 19 perform work. Thus, he could not have spent any significant amount of time in the
 20 conformal coating room where Juarez worked for 60 percent of his 60-hour weeks at
 21 SpaceX. Plaintiff Juarez was unable to recall working with either Gutierrez or
 22 Mendoza.

23 Plaintiffs’ counsel incorrectly used the term “Standards of Practice documents”
 24 in Gutierrez’s declaration. This term was never used by SpaceX employees and did
 25 not use to refer to the Avionics SOPs. (Gutierrez Dec., 2:9-10.) There is nothing in
 26 either declaration which negates PVA’s undisputed evidence that the most up-to-date
 27 version of the Avionics department SOPs were kept on Juarez’s computer that he used
 28 on a daily basis. (UF 62; Maxwell Dec., 2:2-4; 2:17-19.) FRE 401, 402, 403, 602.

Separate Statement Paragraph 23: Irrelevant and misleading. Whether he was provided with an SOP specifically “for programmers” for “any assembly area” is irrelevant because SpaceX did not have any such SOPs. The undisputed evidence shows he did receive the SOP that is relevant to this case, for “Polymeric Application on Electronic Assemblies.” This SOP which PVA submitted with its motion for summary judgment was used by the entire Avionics department and contained SpaceX’s instructions for operating PVA’s machine. (Juarez Dec., 6:10-11; Hwang Dec., 1:25-26.) When asked directly about this particular SOP at his deposition, plaintiff testified that he had “no idea” what a “Standard Operating Procedure” or “SOP” even was, and could not remember ever receiving *any* written instructions from SpaceX. (Catalona Dec., 282:17-25, 283:25-284:5.) Critically, plaintiffs have put forward no evidence that negates the relevant SOP that required Juarez to program the PVA 350 according to “the operating instructions in the PVA manual.” (UF 25; Hwang Dec., 11.) Also irrelevant that Mr. Sotelo “laughed at him.”

Objection to the Mendoza and Gutierrez declarations which lack foundation and contain speculation. Plaintiffs are “not allowed to use” either witness “to supply evidence on a motion” because they were not disclosed in plaintiffs’ Rule 26 disclosures, in response to PVA’s interrogatory or when asked to identify plaintiff’s coworkers at his deposition and plaintiffs have not met their burden of establishing that this nondisclosure was substantially justified or harmless. (F.R.C.P. 37(c)(1); *Benjamin v. B&H Education, Inc.*, 877 F.3d 1139, 1150 (9th Cir. 2017); *Medina v. Multaler, Inc.*, 547 F.Supp. 1099, 1106, fn. 8 (C.D. Cal. 2007). Mr. Gutierrez only overlapped with Mr. Juarez during an unidentified portion of 2012 and cannot say what SpaceX was like during the majority of Juarez’s job history. Mr. Mendoza is unable to testify that he worked with Ruben Juarez at any time or ever saw him perform work. Thus, he could not have spent any significant amount of time in the conformal coating room where Juarez worked for 60 percent of his 60-hour weeks at SpaceX. Plaintiff Juarez was unable to recall working with either Gutierrez or

1 Mendoza.

2 Plaintiffs' counsel incorrectly used the term "Standards of Practice documents"
3 in Gutierrez's declaration. This term was never used by SpaceX employees and did
4 not use to refer to the Avionics SOPs. (Gutierrez Dec., 2:9-10.) There is nothing in
5 either declaration which negates PVA's undisputed evidence that the most up-to-date
6 version of the Avionics department SOPs were kept on Juarez's computer that he used
7 on a daily basis. (UF 62; Maxwell Dec., 2:2-4; 2:17-19.) FRE 401, 402, 403, 602.

8 **Separate Statement Paragraph 24**: Irrelevant and misleading. Whether he
9 was provided with an SOP specifically "for programmers" for "any assembly area" is
10 irrelevant because SpaceX did not have any such SOPs. The undisputed evidence
11 shows he did receive the SOP that is relevant to this case, for "Polymeric Application
12 on Electronic Assemblies." This SOP which PVA submitted with its motion for
13 summary judgment was used by the entire Avionics department and contained
14 SpaceX's instructions for operating PVA's machine. (Juarez Dec., 6:10-11; Hwang
15 Dec., 1:25-26.) When asked directly about this particular SOP at his deposition,
16 plaintiff testified that he had "no idea" what a "Standard Operating Procedure" or
17 "SOP" even was, and could not remember ever receiving *any* written instructions from
18 SpaceX. (Catalona Dec., 282:17-25, 283:25-284:5.) Critically, plaintiffs have put
19 forward no evidence that negates the relevant SOP that required Juarez to program the
20 PVA 350 according to "the operating instructions in the PVA manual." (UF 25;
21 Hwang Dec., 11.) Also irrelevant that Mr. Sotelo "laughed at him."

22 Objection to the Mendoza and Gutierrez declarations which lack foundation and
23 contain speculation. Plaintiffs are "not allowed to use" either witness "to supply
24 evidence on a motion" because they were not disclosed in plaintiffs' Rule 26
25 disclosures, in response to PVA's interrogatory or when asked to identify plaintiff's
26 coworkers at his deposition and plaintiffs have not met their burden of establishing that
27 this nondisclosure was substantially justified or harmless. (F.R.C.P. 37(c)(1);
28 *Benjamin v. B&H Education, Inc.*, 877 F.3d 1139, 1150 (9th Cir. 2017); *Medina v.*

1 *Multaler, Inc.*, 547 F.Supp. 1099, 1106, fn. 8 (C.D. Cal. 2007). Mr. Gutierrez only
 2 overlapped with Mr. Juarez during an unidentified portion of 2012 and cannot say
 3 what SpaceX was like during the majority of Juarez's job history. Mr. Mendoza is
 4 unable to testify that he worked with Ruben Juarez at any time or ever saw him
 5 perform work. Thus, he could not have spent any significant amount of time in the
 6 conformal coating room where Juarez worked for 60 percent of his 60-hour weeks at
 7 SpaceX. Plaintiff Juarez was unable to recall working with either Gutierrez or
 8 Mendoza.

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 11 not use to refer to the Avionics SOPs. (Gutierrez Dec., 2:9-10.) There is nothing in
 12 either declaration which negates PVA's undisputed evidence that the most up-to-date
 13 version of the Avionics department SOPs were kept on Juarez's computer that he used
 14 on a daily basis. (UF 62; Maxwell Dec., 2:2-4; 2:17-19.) FRE 401, 402, 403, 602.

15 **Separate Statement Paragraph 25:** Irrelevant and misleading. Nothing in
 16 plaintiff's declaration disputes the evidence which shows he did receive the SOP that is
 17 relevant to this case, for "Polymeric Application on Electronic Assemblies." This SOP
 18 which PVA submitted with its motion for summary judgment was used by the entire
 19 Avionics department and contained SpaceX's instructions for operating PVA's
 20 machine. (Juarez Dec., 6:10-11; Hwang Dec., 1:25-26.) When asked directly about
 21 this particular SOP at his deposition, plaintiff testified that he had "no idea" what a
 22 "Standard Operating Procedure" or "SOP" even was, and could not remember ever
 23 receiving *any* written instructions from SpaceX. (Catalona Dec., 282:17-25, 283:25-
 24 284:5.) Critically, plaintiffs have put forward no evidence that negates the relevant
 25 SOP that required Juarez to program the PVA 350 according to "the operating
 26 instructions in the PVA manual." (UF 25; Hwang Dec., 11.) It is vague, ambiguous,
 27 irrelevant and immaterial whether the manual was purportedly not on his computer.
 28 SpaceX maintained all manufacturer manuals and specifications for its purchased

1 equipment, including the PVA 350, “at its Hawthorne campus.” (UF 26; Hwang Dec.,
 2 1:15-17.) This is never questioned in plaintiffs’ opposition papers. To read PVA’s
 3 manual, which plaintiffs admit PVA did provide to SpaceX, all plaintiff had to do was
 4 ask but he never asked to see it and there is no explanation why. (UF 16; Pl. Sep.
 5 Stmt., 79:5-7.)

6 Objection to the Mendoza and Gutierrez declarations which lack foundation and
 7 contain speculation. Plaintiffs are “not allowed to use” either witness “to supply
 8 evidence on a motion” because they were not disclosed in plaintiffs’ Rule 26
 9 disclosures, in response to PVA’s interrogatory or when asked to identify plaintiff’s
 10 coworkers at his deposition and plaintiffs have not met their burden of establishing that
 11 this nondisclosure was substantially justified or harmless. (F.R.C.P. 37(c)(1);
 12 *Benjamin v. B&H Education, Inc.*, 877 F.3d 1139, 1150 (9th Cir. 2017); *Medina v.*
 13 *Multaler, Inc.*, 547 F.Supp. 1099, 1106, fn. 8 (C.D. Cal. 2007). Mr. Gutierrez only
 14 overlapped with Mr. Juarez during an unidentified portion of 2012 and cannot say
 15 what SpaceX was like during the majority of Juarez’s job history. Mr. Mendoza is
 16 unable to testify that he worked with Ruben Juarez at any time or ever saw him
 17 perform work. Thus, he could not have spent any significant amount of time in the
 18 conformal coating room where Juarez worked for 60 percent of his 60-hour weeks at
 19 SpaceX. Plaintiff Juarez was unable to recall working with either Gutierrez or
 20 Mendoza.

21 Plaintiffs’ counsel incorrectly used the term “Standards of Practice documents”
 22 in Gutierrez’s declaration. This term was never used by SpaceX employees and did
 23 not use to refer to the Avionics SOPs. (Gutierrez Dec., 2:9-10.) There is nothing in
 24 either declaration which negates PVA’s undisputed evidence that the most up-to-date
 25 version of the Avionics department SOPs were kept on Juarez’s computer that he used
 26 on a daily basis. (UF 62; Maxwell Dec., 2:2-4; 2:17-19.) FRE 401, 402, 403, 602.

27 **Separate Statement Paragraph 26:** Irrelevant and misleading. It is vague,
 28 ambiguous, irrelevant and immaterial whether the PVA manual was purportedly not on

1 his computer. SpaceX maintained all manufacturer manuals and specifications for its
 2 purchased equipment, including the PVA 350, “at its Hawthorne campus.” (UF 26;
 3 Hwang Dec., 1:15-17.) This is never questioned in plaintiffs’ opposition papers. To
 4 read PVA’s manual, which plaintiffs admit PVA did provide to SpaceX, all plaintiff
 5 had to do was ask but he never asked to see it and there is no explanation why. (UF
 6 16; Pl. Sep. Stmt., 79:5-7.)

7 Objection to the Mendoza and Gutierrez declarations which lack foundation and
 8 contain speculation. Plaintiffs are “not allowed to use” either witness “to supply
 9 evidence on a motion” because they were not disclosed in plaintiffs’ Rule 26
 10 disclosures, in response to PVA’s interrogatory or when asked to identify plaintiff’s
 11 coworkers at his deposition and plaintiffs have not met their burden of establishing that
 12 this nondisclosure was substantially justified or harmless. (F.R.C.P. 37(c)(1);
 13 *Benjamin v. B&H Education, Inc.*, 877 F.3d 1139, 1150 (9th Cir. 2017); *Medina v.*
 14 *Multaler, Inc.*, 547 F.Supp. 1099, 1106, fn. 8 (C.D. Cal. 2007). Neither witness
 15 mentions the PVA manual so their declarations are irrelevant. FRE 401, 402, 403,
 16 602.

17
 18 Separate Statement Paragraph 28: All of the cited evidence is irrelevant because
 19 it does not contradict or call into question the referenced deposition testimony in which
 20 Mr. Juarez said his duties did not change. FRE 401, 402.

21 Separate Statement Paragraph 29: All of the cited evidence is irrelevant because
 22 it does not contradict or call into question the referenced deposition testimony in which
 23 Mr. Juarez said he was the “main support” for the PVA 350. Plaintiffs’ separate
 24 statement is also argumentative. FRE 401, 402, 403.

25 Separate Statement Paragraph 30: Plaintiff does not dispute that he made this
 26 admission in the complaint. None of the cited evidence calls this admission into
 27 question. Plaintiffs’ counsel’s attempt to characterize this evidence is argumentative
 28 and irrelevant. FRE 401, 402, 403.

1 Separate Statement Paragraph 31: All of the cited evidence is irrelevant because
 2 it does not contradict or call into question the referenced deposition testimony.
 3 Plaintiffs' separate statement is also argumentative. FRE 401, 402, 403.

4 Separate Statement Paragraph 32: All of the cited evidence is irrelevant because
 5 it does not contradict or call into question the referenced deposition testimony.
 6 Plaintiffs' separate statement is also argumentative. FRE 401, 402, 403.

7 Separate Statement Paragraph 33: All of the cited evidence is irrelevant because
 8 it does not contradict or call into question the referenced deposition testimony.
 9 Plaintiffs' separate statement is also argumentative. FRE 401, 402, 403.

10 Separate Statement Paragraph 34: All of the cited evidence is irrelevant because
 11 it does not contradict or call into question the referenced deposition testimony.
 12 Plaintiffs' separate statement is also argumentative. The evidence cited does not
 13 support the suggestion that the Avionics department's SOP was "not applicable" which
 14 is an unreasonable inference made by plaintiffs' attorney. FRE 401, 402, 403.

15 Separate Statement Paragraph 35: All of the cited evidence is irrelevant because
 16 it does not contradict or call into question the referenced deposition testimony.
 17 Plaintiffs' separate statement is also argumentative. FRE 401, 402, 403.

18 Separate Statement Paragraph 36: All of the cited evidence is irrelevant because
 19 it does not contradict or call into question the referenced deposition testimony.
 20 Plaintiffs' separate statement is also argumentative. FRE 401, 402, 403.

21 Separate Statement Paragraph 37: Plaintiff does not dispute that he made this
 22 admission in the complaint. None of the cited evidence calls this admission into
 23 question. Plaintiffs' counsel's attempt to characterize this evidence is argumentative
 24 and irrelevant. FRE 401, 402, 403.

25 Separate Statement Paragraph 38: Plaintiff does not dispute that he made this
 26 admission to Dr. Regev. None of the cited evidence calls this admission into question.
 27 Plaintiffs' counsel's attempt to characterize this evidence is argumentative and
 28 irrelevant. Mr. Juarez's mischaracterization of this medical record is inadmissible

1 hearsay. At his deposition, he stated that he had never even heard of Dr. Regev: “Q.
 2 This is a medical record from Isaac Regev, M.D. Do you remember who that guy is?
 3 A. No, sir.” (Catalona Dec., 337:22-24.) In any event, the actual medical record
 4 speaks for itself and is undisputed. Plaintiffs’ counsel’s attempt to characterize this
 5 evidence is argumentative and irrelevant. FRE 401, 402, 403.

6 Separate Statement Paragraph 39: Plaintiff does not dispute that he made these
 7 statements to Dr. Windman. These statements refer back to the time he worked at
 8 SpaceX from 2012 to March, 2014 regardless of the fact that Dr. Windman wrote them
 9 down in 2016. None of plaintiffs’ cited evidence calls this admission into question.
 10 Plaintiffs’ counsel’s attempt to characterize this evidence is argumentative and
 11 irrelevant. He also makes no effort to explain his statements to Dr. Windman, whose
 12 report is never addressed in the opposition. Plaintiffs’ evidentiary objection that her
 13 report is hearsay must be overruled because it was offered as a business record
 14 pursuant to Federal Rule of Evidence (“FRE”) 803(6) and 902(11), Catalona Dec.,
 15 417, is thus “self-authenticating” and presumptively admissible over plaintiffs’ hearsay
 16 objection because plaintiffs have offered no evidence to “show that the source of the
 17 information or the method or circumstances of preparation indicate a lack of
 18 trustworthiness.” FRE 803(6)(E). Plaintiff’s statements to Dr. Windman survive
 19 plaintiffs’ hearsay objection for the additional reason that they are “by a party” and
 20 thus excluded from the definition of hearsay. FRE 801(d)(2)(A). Dr. Windman’s
 21 entire report is a party admission because it was “made *by the party’s agent* or
 22 *employee on a matter within the scope of that relationship and while it existed.*” FRE
 23 801(d)(2)(B) (emphasis added). FRE 401, 402, 403.

24 Separate Statement Paragraph 40: All of the cited evidence is irrelevant because
 25 it does not contradict or call into question plaintiff’s admissions in the referenced
 26 deposition testimony. There is no suggestion in the referenced transcript that Mr.
 27 Juarez was talking about an electrical shock or hurting his hand. He testified regarding
 28 SpaceX’s bypassing the safety switch in the context of cleaning “the lines” of “coating

1 material” that he would do “most every day” for two minutes to “an hour or so. The
 2 only problem with that is the equipment, they bypass the emergency switch. So
 3 sometimes you have to open it. And in normal conditions, it should have shut down,
 4 not allow you to work on the machine. But someone will bypass the safety switch.”
 5 He then testified that he made a request to acquire “new equipment for safety” to
 6 prevent his hazard which consisted of “an alarm system [for] whenever the *exhaust fan*
 7 *is not working*. It will shut down or would not allow you to operate the machine.”
 8 (Catalona Dec., 450:3-16.) He also testified that the machine was “obsolete” because
 9 “it didn’t have the alarm system to advise the operator *that the suction system was not*
 10 *working or pulling all of the fumes* out of it.” (UF 42; Catalona Dec., 450:16-20,
 11 473:2-6.) The testimony only speaks about his knowledge of the hazard of breathing
 12 the “coating material” and none of the evidence cited by the plaintiffs calls this
 13 testimony into question. He also made the same statements to his toxicologist that his
 14 “employer bypass the safety switch” which caused exposure to coating materials. (UF
 15 41.) Plaintiffs’ counsel’s attempt to characterize this evidence is misleading,
 16 argumentative and irrelevant. FRE 401, 402, 403.

17 Separate Statement Paragraph 41: Plaintiff does not dispute that he made this
 18 admission to his toxicologist. These statements refer back to the time he worked at
 19 SpaceX from 2012 to March, 2014 regardless of the fact that he wrote them down in
 20 2015 or 2016. He did not learn his employer bypassed the safety switch in 2015 or
 21 2016, he learned this when he worked at SpaceX in 2012-2014 and complained to
 22 SpaceX about it “to no avail.” None of plaintiffs’ cited evidence calls this admission
 23 into question. Plaintiffs’ counsel’s attempt to characterize this evidence is
 24 argumentative and irrelevant. FRE 401, 402, 403.

25 Separate Statement Paragraph 42: Plaintiff does not dispute that he made these
 26 admissions during his workers’ compensation deposition. These statements refer back
 27 to the time he worked at SpaceX from 2012 to March, 2014 regardless of the fact that
 28 he made them at a deposition in 2015. He did not request safety upgrades to the

1 machine in 2015 but when he worked at SpaceX in 2012-2014 and complained to
 2 SpaceX “to no avail.” None of plaintiffs’ cited evidence calls this testimony into
 3 question. Plaintiffs’ counsel’s attempt to characterize this evidence is argumentative
 4 and irrelevant. FRE 401, 402, 403.

5 Separate Statement Paragraph 43: Plaintiff does not dispute that he made these
 6 admissions during his workers’ compensation deposition. None of plaintiff’s cited
 7 evidence contradicts or calls into question the evidence that plaintiff’s concerns
 8 expressed to SpaceX were regarding exposure to conformal coating material from
 9 PVA’s machine. (UF 42; Catalona Dec., 450:3-20, 473:2-6.) None of plaintiffs’ cited
 10 evidence calls this testimony into question. Plaintiffs’ counsel’s attempt to
 11 characterize this evidence is argumentative and irrelevant. FRE 401, 402, 403.

12 Separate Statement Paragraph 44: Plaintiff does not dispute that he made these
 13 admissions during his workers’ compensation deposition. These statements refer back
 14 to the time he worked at SpaceX from 2012 to March, 2014 regardless of the fact that
 15 he made them at a deposition in 2015. None of plaintiff’s cited evidence contradicts or
 16 calls into question the evidence that plaintiff’s concerns expressed to SpaceX were
 17 regarding exposure to conformal coating material from PVA’s machine. (UF 42;
 18 Catalona Dec., 450:3-20, 473:2-6.) None of plaintiffs’ cited evidence calls this
 19 testimony into question. Plaintiffs’ counsel’s attempt to characterize this evidence is
 20 argumentative and irrelevant. FRE 401, 402, 403.

21 Separate Statement Paragraph 45: Plaintiff does not dispute that he made these
 22 admission during his workers’ compensation deposition. These statements refer back
 23 to the time he worked at SpaceX from 2012 to March, 2014 regardless of the fact that
 24 he made them at a deposition in 2015. None of plaintiff’s cited evidence contradicts or
 25 calls into question plaintiffs’ admissions that Humiseal thinner was both a cleaning
 26 agent and a conformal coating material. Plaintiff falsely states that the chemicals he
 27 used to clean electronic parts at SpaceX were “unknown” and “unconnected to the
 28 PVA 350” which is unambiguously contradicted by his prior testimony that he used

Humiseal thinner on a daily basis as both a “cleaning agent ... to soak parts to be cleaned” and a conformal coating material in PVA’s machine. (*Compare* Juarez Dec., 2:23-25 with UF 45-46, Catalona Dec., 448:22-449:12.) None of plaintiffs’ cited evidence calls his referenced testimony into question. Plaintiffs’ counsel’s attempt to characterize this evidence is argumentative and irrelevant. FRE 401, 402, 403

Separate Statement Paragraph 46: Plaintiff does not dispute that he made these admissions on a medical intake form in his workers’ compensation action. These statements refer back to the time he worked at SpaceX from 2012 to March, 2014 regardless of the fact that he wrote them down in 2015 or 2016. Plaintiffs’ counsel’s attempt to characterize this evidence is argumentative and irrelevant. FRE 401, 402, 403.

Separate Statement Paragraph 48: Plaintiff does not dispute that he missed this amount of work and ultimately left SpaceX for good on March 26, 2014. “36-37” are pages added to Ms. Dhillon’s declaration pursuant to Local Rule 11-5.1, not exhibits. These are SpaceX employment records for Mr. Juarez which show the amount of time he missed from work due to his illness due to the medical leave requested by Mr. Juarez. They are offered as business records because they were “made at or near the time of the statements, acts and events that are reported or contained in the records by persons with knowledge of and a business duty to record those matters. These records are kept in the course of SpaceX’s regularly conducted business activities and made as a regular practice and custom of the business.” (Dhillon Dec., 1:23-27.) They are thus are “self-authenticating” pursuant to FRE 803(6) and 902(11) and presumptively admissible because plaintiffs have offered no evidence to “show that the source of the information or the method or circumstances of preparation indicate a lack of trustworthiness.” FRE 803(6)(E). Plaintiffs’ counsel’s attempt to characterize this evidence is argumentative and irrelevant. FRE 401, 402, 403.

Separate Statement Paragraph 49: Plaintiff does not dispute that he made these admissions in his workers’ compensation claim form on September 24, 2014 in which

1 he claimed his headaches and aneurysm were caused by repetitive and continuous
 2 exposure to toxic substances. None of plaintiffs' cited evidence calls this testimony
 3 into question. Plaintiffs' counsel's attempt to characterize this evidence is
 4 argumentative and irrelevant. FRE 401, 402, 403.

5 Separate Statement Paragraph 50: Plaintiff does not dispute that he made this
 6 admission to Dr. Regev. None of the cited evidence calls this admission into question.
 7 Plaintiffs' counsel's attempt to characterize this evidence is argumentative and
 8 irrelevant. Mr. Juarez's mischaracterization of this medical record is inadmissible
 9 hearsay. At his deposition, he stated that he had never even heard of Dr. Regev: "Q.
 10 This is a medical record from Isaac Regev, M.D. Do you remember who that guy is?
 11 A. No, sir." (Catalona Dec., 337:22-24.) In any event, the actual medical record
 12 speaks for itself and is undisputed. Plaintiffs' counsel's blatant attempt to
 13 mischaracterize this evidence is argumentative and irrelevant. FRE 401, 402, 403

14 Separate Statement Paragraph 51: Plaintiff does not dispute that he made this
 15 admission at his deposition in this case. This statement refers back to the time
 16 February, 2015 *before* his attorneys and workers' compensation doctors received the
 17 MSDS sheets during the workers' compensation action irrespective of the fact that he
 18 said this at his deposition in 2018. This proves that he knew he had been exposed to
 19 "toxic" substances *before* this critical event happened and his entire argument about
 20 the MSDS sheets is an after-the-fact strategy solely to avoid application of the statute
 21 of limitations. None of plaintiffs' cited evidence calls this admission into question.
 22 Plaintiffs' counsel's attempt to characterize this evidence is argumentative and
 23 irrelevant. FRE 401, 402, 403.

24 Separate Statement Paragraph 52: Plaintiff does not dispute that he made these
 25 admissions during his workers' compensation deposition. None of plaintiffs' cited
 26 evidence calls this testimony into question. Plaintiffs' counsel's attempt to
 27 characterize this evidence is argumentative and irrelevant. FRE 401, 402, 403.

28 Separate Statement Paragraph 53: Plaintiff does not dispute that he made these

1 admissions during his workers' compensation deposition. None of plaintiffs' cited
 2 evidence calls this testimony into question. Plaintiffs' counsel's attempt to
 3 characterize this evidence is argumentative and irrelevant. FRE 401, 402, 403.

4 Separate Statement Paragraph 54: Plaintiff does not dispute that he made these
 5 admissions during his workers' compensation deposition. None of plaintiffs' cited
 6 evidence calls this testimony into question. Plaintiffs' counsel's attempt to
 7 characterize this evidence is argumentative and irrelevant. FRE 401, 402, 403.

8 Separate Statement Paragraph 55: Plaintiff does not dispute that he made this
 9 admission in plaintiffs' First Amended Complaint. None of plaintiffs' cited evidence
 10 calls this admission into question. Plaintiffs' counsel's attempt to characterize this
 11 evidence is argumentative and irrelevant. FRE 401, 402, 403.

12 Separate Statement Paragraph 56: Plaintiff does not dispute that Dr. Regev
 13 made this statement. Plaintiffs' counsel's attempt to characterize this evidence is
 14 argumentative and irrelevant. FRE 401, 402, 403.

15 Separate Statement Paragraph 57: Plaintiff does not dispute that this email was
 16 sent or its content. Plaintiffs' counsel's attempt to characterize this evidence is
 17 argumentative and irrelevant. FRE 401, 402, 403.

18 Separate Statement Paragraph 58: Plaintiff does not dispute that the MSDS
 19 sheets were received at this time. Plaintiffs' counsel's attempt to characterize this
 20 evidence is argumentative and irrelevant. FRE 401, 402, 403.

21 Separate Statement Paragraph 60: Plaintiff does not dispute that he made this
 22 allegation in plaintiffs' First Amended Complaint. None of plaintiffs' cited evidence
 23 calls this into question. Plaintiffs' counsel's attempt to characterize this evidence is
 24 argumentative and irrelevant. FRE 401, 402, 403.

25 Separate Statement Paragraph 61: Plaintiff does not dispute that he made this
 26 allegation in plaintiffs' original state court action. None of plaintiffs' cited evidence
 27 calls this into question. Plaintiffs' counsel's attempt to characterize this evidence is
 28 argumentative and irrelevant. FRE 401, 402, 403.

1 Separate Statement Paragraph 62: Irrelevant, argumentative and misleading. In
 2 his declaration, Juarez does not deny that the MSDS sheets were available on
 3 SpaceX's "network" which he admits was available on his computer, even after
 4 reading the declarations of coworkers Maxwell, Phan and Hwang, who each testified
 5 that the MSDS sheets were "easily accessible" on this site. (Juarez Dec., 2:8-11, 5:4-7;
 6 Phan Dec., 2:4, Maxwell Dec., 2:2-4, Hwang Dec., 2:2.) There is no evidentiary
 7 support for the suggestion that a billion dollar company like SpaceX would not provide
 8 its employees with access to MSDS sheets, which it was legally required to do by
 9 Cal/OSHA's HazCom regulations. (Dhillon Dec., 43, 46-51; 29 CFR
 10 1910.1200(b)(4)(ii)-(iii), 29 CFR 1910.1200(g)(10).) This absurd suggestion would
 11 also mean that all of the SpaceX's Hazard Communication course materials before this
 12 Court, as well as the evidence that Juarez took and completed this course, are a
 13 complete fabrication. (UF 66; Dhillon Dec., 2:6-12, 2:19-20, 3:1-10, 39-80; Maxwell
 14 Dec., 3:4-15, 36-77.) But there is absolutely nothing in the record which calls this
 15 undisputed evidence into question. (Pl. Sep. Stmt., 293:27-298:13.)

16 Objection to the Mendoza and Gutierrez declarations which lack foundation and
 17 contain speculation. Plaintiffs are "not allowed to use" either witness "to supply
 18 evidence on a motion" because they were not disclosed in plaintiffs' Rule 26
 19 disclosures, in response to PVA's interrogatory or when asked to identify plaintiff's
 20 coworkers at his deposition and plaintiffs have not met their burden of establishing that
 21 this nondisclosure was substantially justified or harmless. (F.R.C.P. 37(c)(1);
 22 *Benjamin v. B&H Education, Inc.*, 877 F.3d 1139, 1150 (9th Cir. 2017); *Medina v.*
 23 *Multaler, Inc.*, 547 F.Supp. 1099, 1106, fn. 8 (C.D. Cal. 2007). Mr. Gutierrez only
 24 overlapped with Mr. Juarez during an unidentified portion of 2012 and cannot say
 25 what SpaceX was like during the majority of Juarez's job history. Mr. Mendoza is
 26 unable to testify that he worked with Ruben Juarez at any time or ever saw him
 27 perform work. Thus, he could not have spent any significant amount of time in the
 28 conformal coating room where Juarez worked for 60 percent of his 60-hour weeks at

1 SpaceX. Plaintiff Juarez was unable to recall working with either Gutierrez or
 2 Mendoza. FRE 401, 402, 403.

3 Separate Statement Paragraph 63: Argumentative and irrelevant. There is no
 4 evidentiary support for the suggestion that SpaceX did not follow this rule or that the
 5 “Hazard Communication” course was not given. This suggestion that a billion dollar
 6 company like SpaceX would not provide its employees with access to MSDS sheets,
 7 which it was legally required to do by Cal/OSHA’s HazCom regulations, is absurd.
 8 (Dhillon Dec., 43, 46-51; 29 CFR 1910.1200(b)(4)(ii)-(iii), 29 CFR 1910.1200(g)(10).)
 9 Plaintiffs have put forward no evidence to suggest that the documentation of SpaceX’s
 10 Hazard Communication course materials before this Court, as well as the evidence that
 11 Juarez took and completed this course, are a complete fabrication. (UF 66; Dhillon
 12 Dec., 2:6-12, 2:19-20, 3:1-10, 39-80; Maxwell Dec., 3:4-15, 36-77.) Neither Juarez,
 13 Mendoza or Gutierrez deny they took this course or the documentation PVA provided
 14 with its motion for summary judgment.

15 Objection to the Mendoza and Gutierrez declarations which lack foundation and
 16 contain speculation. Plaintiffs are “not allowed to use” either witness “to supply
 17 evidence on a motion” because they were not disclosed in plaintiffs’ Rule 26
 18 disclosures, in response to PVA’s interrogatory or when asked to identify plaintiff’s
 19 coworkers at his deposition and plaintiffs have not met their burden of establishing that
 20 this nondisclosure was substantially justified or harmless. (F.R.C.P. 37(c)(1);
 21 *Benjamin v. B&H Education, Inc.*, 877 F.3d 1139, 1150 (9th Cir. 2017); *Medina v.*
 22 *Multaler, Inc.*, 547 F.Supp. 1099, 1106, fn. 8 (C.D. Cal. 2007). FRE 401, 402, 403.

23 Separate Statement Paragraph 64: None of plaintiffs’ cited evidence establishes
 24 that the MSDS sheets were not present on the 14 to 18 computers located where
 25 plaintiff worked. The fact that Mr. Maxwell was the head of the entire Avionics
 26 department and not the direct supervisor of Mr. Juarez does not change the fact that he
 27 had a direct line of site to plaintiff’s computer and knew what was available on all the
 28 computers in his department. Plaintiff does not deny that the MSDS sheets were

1 available on the SpaceX intranet site which remains undisputed. Plaintiffs' counsel's
 2 attempt to characterize this evidence is argumentative and irrelevant. FRE 401, 402,
 3 403.

4 Objection to the Mendoza and Gutierrez declarations which lack foundation and
 5 contain speculation. Plaintiffs are "not allowed to use" either witness "to supply
 6 evidence on a motion" because they were not disclosed in plaintiffs' Rule 26
 7 disclosures, in response to PVA's interrogatory or when asked to identify plaintiff's
 8 coworkers at his deposition and plaintiffs have not met their burden of establishing that
 9 this nondisclosure was substantially justified or harmless. (F.R.C.P. 37(c)(1);
 10 *Benjamin v. B&H Education, Inc.*, 877 F.3d 1139, 1150 (9th Cir. 2017); *Medina v.*
 11 *Multaler, Inc.*, 547 F.Supp. 1099, 1106, fn. 8 (C.D. Cal. 2007). FRE 401, 402, 403

12 Separate Statement Paragraph 65: Juarez in his declaration does not address or
 13 deny that this design team worked together to create the conformal coating material.
 14 Objection to the unsupported suggestion that because he did not have "chemistry
 15 training" he "was not allowed to mix chemical compounds." There is no evidence that
 16 mixing chemical compounds required chemistry training. His statements are also
 17 contradicted by his sworn deposition testimony that he mixed separate chemicals to
 18 create different compounds as part of his job, including Arathane and Humiseal
 19 materials. (*See excerpts of testimony, infra*, Juarez Depo., March 30, 2015, Catalonia
 20 Dec., 448:22-449:4, 458:14-459:8; Juarez Depo., March 8, 2018, Catalonia Dec.,
 21 268:1-3, 268:15-17, 269:8-18.) No reasonable jury could believe plaintiff's
 22 explanation for this contradiction which is that his prior testimony only meant that he
 23 mixed a "single container" of chemicals. (Juarez Dec., 5:26.) This does not make
 24 sense because he testified at his deposition that he mixed the Humiseal conformal
 25 coating material with the Humiseal thinner that "we talked about before," and also that
 26 he had to mix Arathane Part A with Arathane part B which were "separate chemicals"
 27 that "would start to cure rather quickly" when mixed. (Catalonia Dec., 269:10-15,
 28 459:5-8.)

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1 Juarez falsely states that he is now certain he never had “access to the MSDS
2 sheets.” (Juarez Dec., 2:12.) At his deposition, he admitted that he could not
3 remember the MSDS sheets “were or whether there [sic] weren’t” there, and could not
4 even remember asking for them. “Q. Did you ever ask for the MSDS sheets at Space?
5 Yes or no. A. I don’t remember.” (Catalona Dec., 289:13-16, 290:5-7.) There is
6 absolutely nothing to explain how he possibly could have been denied “access” to the
7 MSDS sheets when he never asked for them. “The district court could reasonably
8 conclude that no juror would believe Yeager's weak explanation for his sudden ability
9 to remember the answers to important questions about the critical issues of his
10 lawsuit.” *Yeager v. Bowlin*, 693 F.3d 1076, 1981 (9th Cir. 2012.)

11 There is also no foundation that “chemical training” is necessary to
12 “understand” MSDS sheets. These documents stated, for example, “Emergency
13 Overview: WARNING! FLAMMABLE LIQUID AND VAPOR. CAUSES
14 RESPIRATORY TRACT, EYE AND SKIN IRRITATION. MAY CAUSE
15 ALLERGIC RESPIRATORY AND SKIN REACTION. CONTAINS MATERIAL
16 THAT CAN CAUSE TARGET ORGAN DAMAGE. POSSIBLE
17 DEVELOPMENTAL HAZARD – CONTAINS MATERIAL WHICH MAY CAUSE
18 ADVERSE DEVELOPMENTAL EFFECTS, BASED ON ANIMAL DATA. ... Do
19 not breath vapor or mist. Do not get on skin or clothing. Avoid contact with eyes.
20 Avoid exposure during pregnancy. Use only with adequate ventilation. Keep
21 container tightly closed and sealed until ready for use. Wash thoroughly after
22 handling. . . . Contains material which may cause damage to the following organs:
23 kidneys, the nervous system, liver, brain, central nervous system.” (Catalona Dec.,
24 628, 637 (MSDS for Arathane 5750A).

25 Plaintiff’s claim that he was never “given” the MSDS sheets is immaterial and
26 irrelevant.

27 Objection to the Mendoza and Gutierrez declarations which lack foundation and
28 contain speculation. Plaintiffs are “not allowed to use” these witnesses “to supply

evidence on a motion” because he was not disclosed in plaintiffs’ Rule 26 disclosures, in response to PVA’s interrogatory or when plaintiff was asked to identify plaintiff’s coworkers at his deposition and plaintiffs have not met their burden of establishing that this nondisclosure was substantially justified or harmless. F.R.C.P. 37(c)(1); *Benjamin v. B&H Education, Inc.*, 877 F.3d 1139, 1150 (9th Cir. 2017); *Medina v. Multaler, Inc.*, 547 F.Supp. 1099, 1106, fn. 8 (C.D. Cal. 2007).

Also irrelevant is the fact that these witnesses “never saw Ruben Juarez mix chemicals.” Mendoza and Gutierrez have no foundation to testify about plaintiff’s “hand mixing” of chemicals because they were not part of the team that designed SpaceX’s conformal coating formula in 2012. (UF 19-20; Maxwell Dec., 2:21-23.) FRE 401, 402, 403, 602.

Separate Statement Paragraph 66: Plaintiffs have put forward no evidence to suggest that the documentation of SpaceX’s Hazard Communication course materials before this Court, as well as the evidence that Juarez took and completed this course, are a complete fabrication. (UF 66; Dhillon Dec., 2:6-12, 2:19-20, 3:1-10, 39-80; Maxwell Dec., 3:4-15, 36-77.) Neither Juarez, Mendoza or Gutierrez deny they took this course nor do they deny the validity of the course materials PVA provided with its motion that SpaceX authenticated as business records and which Mr. Maxwell personally verified that he and “all Avionics Department employees including Ruben Juarez” took. (Dhillon Dec., 1:16-27, 3:1-17; Maxwell Dec., 3:4-15.)

Objection to the Mendoza and Gutierrez declarations which lack foundation and contain speculation. Plaintiffs are “not allowed to use” either witness “to supply evidence on a motion” because they were not disclosed in plaintiffs’ Rule 26 disclosures, in response to PVA’s interrogatory or when asked to identify plaintiff’s coworkers at his deposition and plaintiffs have not met their burden of establishing that this nondisclosure was substantially justified or harmless. (F.R.C.P. 37(c)(1); *Benjamin v. B&H Education, Inc.*, 877 F.3d 1139, 1150 (9th Cir. 2017); *Medina v. Multaler, Inc.*, 547 F.Supp. 1099, 1106, fn. 8 (C.D. Cal. 2007). FRE 401, 402, 403.

1 Separate Statement Paragraph 67: Objection. None of the evidence cited is
 2 relevant to whether the MSDS sheets including for Arathane and Humiseal were
 3 available on the internet from 2012 to the present. All of the evidence cited is
 4 irrelevant and immaterial. FRE 401, 402, 403.

5 Separate Statement Paragraph 68: Objection. None of the evidence is
 6 contradicts or calls into question plaintiff's deposition testimony in which he admitted
 7 he never saw or asked to see the MSDS sheets while he worked at SpaceX. All of the
 8 evidence cited is irrelevant and immaterial. FRE 401, 402, 403.

9 Juarez falsely states that he is now certain he never had "access to the MSDS
 10 sheets." (Juarez Dec., 2:12.) At his deposition, he admitted that he could not
 11 remember whether the MSDS sheets "were or whether there [sic] weren't" there, and
 12 could not even remember asking for them. "Q. Did you ever ask for the MSDS sheets
 13 at Space? Yes or no. A. I don't remember." (Catalona Dec., 289:13-16, 290:5-7.)
 14 There is absolutely nothing to explain how he possibly could have been denied
 15 "access" to the MSDS sheets when he never asked for them. "The district court could
 16 reasonably conclude that no juror would believe Yeager's weak explanation for his
 17 sudden ability to remember the answers to important questions about the critical issues
 18 of his lawsuit." *Yeager v. Bowlin*, 693 F.3d 1076, 1981 (9th Cir. 2012.)

19 Objection to the Mendoza and Gutierrez declarations which lack foundation and
 20 contain speculation. Plaintiffs are "not allowed to use" either witness "to supply
 21 evidence on a motion" because they were not disclosed in plaintiffs' Rule 26
 22 disclosures, in response to PVA's interrogatory or when asked to identify plaintiff's
 23 coworkers at his deposition and plaintiffs have not met their burden of establishing that
 24 this nondisclosure was substantially justified or harmless. (F.R.C.P. 37(c)(1);
 25 *Benjamin v. B&H Education, Inc.*, 877 F.3d 1139, 1150 (9th Cir. 2017); *Medina v.*
 26 *Multaler, Inc.*, 547 F.Supp. 1099, 1106, fn. 8 (C.D. Cal. 2007). FRE 401, 402, 403.

27 Separate Statement Paragraph 71: Objection. None of the evidence cited
 28 contradicts or calls into question the fact that plaintiffs admitted that the only

1 investigation either plaintiff did to determine the cause of their injuries was “going to
 2 see his doctors.” Plaintiffs’ discovery responses were never amended and no
 3 documents were identified in plaintiffs’ privilege log except for the handwritten notes
 4 of plaintiffs’ attorney which are irrelevant and immaterial. (UF 77.) The evidence
 5 cited by plaintiffs and plaintiffs’ characterization of this evidence is misleading,
 6 argumentative and irrelevant. FRE 401, 402, 403.

7 Separate Statement Paragraph 72: Objection. Argumentative. Plaintiffs’
 8 characterization of this evidence is misleading, argumentative and irrelevant.
 9 Plaintiffs’ discovery responses were never amended. FRE 401, 402, 403.

10 Separate Statement Paragraph 73: Objection. Argumentative. Plaintiffs’
 11 characterization of this evidence is misleading, argumentative and irrelevant.
 12 Plaintiffs’ discovery responses were never amended. FRE 401, 402, 403.

13 Separate Statement Paragraph 75: Objection. Argumentative. Plaintiffs’
 14 characterization of this evidence is misleading, argumentative and irrelevant.
 15 Plaintiffs’ discovery responses were never amended. FRE 401, 402, 403.

16 Separate Statement Paragraph 76: Objection. Argumentative. Plaintiffs’
 17 characterization of this evidence is misleading, argumentative and irrelevant.
 18 Plaintiffs’ discovery responses were never amended and no documents were identified
 19 in plaintiffs’ privilege log except for the handwritten notes of plaintiffs’ attorney which
 20 are irrelevant and immaterial. (UF 77.) FRE 401, 402, 403.

21 Separate Statement Paragraph 77: Objection. Argumentative. Plaintiffs’
 22 characterization of the privilege log is misleading, argumentative and irrelevant.
 23 Plaintiffs’ discovery responses were never amended and no documents were identified
 24 in plaintiffs’ privilege log except for the handwritten notes of plaintiffs’ attorney which
 25 are irrelevant and immaterial. (UF 77.) FRE 401, 402, 403.

26 Separate Statement Paragraph 79: Objection. Argumentative. Plaintiffs’
 27 characterization of the admissions in the FAC are misleading, argumentative and
 28 irrelevant. The document speaks for itself. FRE 401, 402, 403.

1 Separate Statement Paragraph 80: Objection. Argumentative. Plaintiffs’
 2 characterization of plaintiff’s admissions at his deposition are misleading,
 3 argumentative and irrelevant. Plaintiffs’ deposition testimony was never corrected and
 4 no documents were identified in plaintiffs’ privilege log except for the handwritten
 5 notes of plaintiffs’ attorney which are irrelevant and immaterial. (UF 77.) FRE 401,
 6 402, 403.

7 Separate Statement Paragraph 81: Objection. Argumentative. Plaintiffs’
 8 characterization of the admissions in the FAC is argumentative and irrelevant. The
 9 document speaks for itself. FRE 401, 402, 403.

10 Separate Statement Paragraph 82: Objection. Argumentative. Plaintiffs’
 11 characterization of the allegations in the FAC is argumentative and irrelevant. The
 12 document speaks for itself and these are the only allegations regarding a “failure to
 13 warn” in the complaint. None of the evidence cited is relevant to or addresses this
 14 undisputed fact. FRE 401, 402, 403.

15 Separate Statement Paragraph 83: Objection. Argumentative. Plaintiffs’
 16 characterization of the MSDS sheets and the allegations in the FAC is argumentative
 17 and irrelevant. These documents which are incorporated into the complaint speak for
 18 themselves and state explicitly on them that these materials were made by third parties.
 19 None of the evidence cited is relevant to or addresses this undisputed fact. FRE 401,
 20 402, 403.

21 Separate Statement Paragraph 87: Objection. Argumentative, vague,
 22 misleading. Plaintiffs’ separate statement which states the training was on “the PVA
 23 Inc. machine” mischaracterizes the deposition testimony. In October, 2011, Mr. Juarez
 24 was trained by SpaceX on a completely different machine, a “PVA **650**.” (Catalona
 25 Dec., 301:17-303:21; Loftus Brewer Dec., 65:9-17, 79:12-24.) This training is
 26 irrelevant to plaintiffs’ failure to warn claims and strict product liability cause of action
 27 about the PVA 350 designed and sold to SpaceX in 2009 which is at issue in PVA’s
 28 motion for summary judgment. FRE 401, 402, 403

Separate Statement Paragraph 91: Objection. Argumentative, conclusory and no foundation. Juarez falsely states that he is now certain he never had “access to the MSDS sheets.” (Juarez Dec., 2:12.) At his deposition, he admitted that he could not remember the MSDS sheets “were or whether there [sic] weren’t” there, and could not even remember asking for them. “Q. Did you ever ask for the MSDS sheets at Space? Yes or no. A. I don’t remember.” (Catalona Dec., 289:13-16, 290:5-7.) There is absolutely nothing to explain how he possibly could have been denied “access” to the MSDS sheets when he never asked for them. “The district court could reasonably conclude that no juror would believe Yeager’s weak explanation for his sudden ability to remember the answers to important questions about the critical issues of his lawsuit.” *Yeager v. Bowlin*, 693 F.3d 1076, 1981 (9th Cir. 2012.) *School Dist. No. 1J, Multnomah County v. ACandS, Inc.* 5 F.3d 1255, 1264 (9th Cir. 1993) (affirming summary judgment and holding that the “sham affidavit” rule “applie[d] to conflicts between affidavits and interrogatory responses as well as deposition testimony.”) Considering declarations which contradict prior discovery responses or testimony “would greatly diminish the utility of summary judgment as a procedure for screening our sham issues of fact.” *Yeager, supra*, at 1980. *Kennedy v. Allied Mut. Ins. Co.*, 952 F.2d 262, 266 (9th Cir. 1991) (“The general rule in the Ninth Circuit is that a party cannot create an issue of fact by an affidavit contradicting his prior deposition testimony.”); *Gonzales v. City of Martinez*, 638 F.Supp.2d 1147, 1150, fn. 3, 1151, fn. 5, 1154, fn. 7, 1157, fn. 8 (N.D. Cal. 2009) (granting summary judgment and striking numerous unexplained contradictions in plaintiff’s declaration); *Rojas v. Roman Catholic Dioceses of Rochester*, 660 F.3d 98, 105 (2nd Cir. 2011) (holding plaintiff’s “new allegations [in a declaration which were] directly contradicted by her prior sworn statements and judicial admissions, were properly rejected by the District Court after a careful consideration of the record before it.”)

There is also no foundation that “chemical training” is necessary to “understand” MSDS sheets. These documents stated, for example, “Emergency

1 Overview: WARNING! FLAMMABLE LIQUID AND VAPOR. CAUSES
 2 RESPIRATORY TRACT, EYE AND SKIN IRRITATION. MAY CAUSE
 3 ALLERGIC RESPIRATORY AND SKIN REACTION. CONTAINS MATERIAL
 4 THAT CAN CAUSE TARGET ORGAN DAMAGE. POSSIBLE
 5 DEVELOPMENTAL HAZARD – CONTAINS MATERIAL WHICH MAY CAUSE
 6 ADVERSE DEVELOPMENTAL EFFECTS, BASED ON ANIMAL DATA. ... Do
 7 not breathe vapor or mist. Do not get on skin or clothing. Avoid contact with eyes.
 8 Avoid exposure during pregnancy. Use only with adequate ventilation. Keep
 9 container tightly closed and sealed until ready for use. Wash thoroughly after
 10 handling. . . . Contains material which may cause damage to the following organs:
 11 kidneys, the nervous system, liver, brain, central nervous system.” (Catalona Dec.,
 12 628, 637 (MSDS for Arathane 5750A).)

13 Plaintiff’s claim that he was never “given” the MSDS sheets is immaterial and
 14 irrelevant.

15 Objection to the Manuel Gutierrez declaration which lacks foundation and
 16 contains speculation. Plaintiffs are “not allowed to use” Mr. Gutierrez’s testimony “to
 17 supply evidence on a motion” because he was not disclosed in their Rule 26
 18 disclosures, in response to PVA’s interrogatory or when asked to identify plaintiff’s
 19 coworkers at his deposition and plaintiffs have not met their burden of establishing that
 20 this nondisclosure was substantially justified or harmless. (F.R.C.P. 37(c)(1);
 21 Benjamin v. B&H Education, Inc., 877 F.3d 1139, 1150 (9th Cir. 2017); Medina v.
 22 Multaler, Inc., 547 F.Supp. 1099, 1106, fn. 8 (C.D. Cal. 2007). Mr. Gutierrez only
 23 overlapped with Mr. Juarez during an unidentified portion of 2012 and cannot say
 24 what SpaceX was like during the majority of Juarez’s job history. FRE 401, 402, 403,
 25 602.

26 Separate Statement Paragraph 92: Objection to the Manuel Gutierrez
 27 declaration which lacks foundation and contains speculation. Plaintiffs are “not
 28 allowed to use” Mr. Gutierrez’s testimony “to supply evidence on a motion” because

1 he was not disclosed in their Rule 26 disclosures, in response to PVA's interrogatory
 2 or when asked to identify plaintiff's coworkers at his deposition and plaintiffs have not
 3 met their burden of establishing that this nondisclosure was substantially justified or
 4 harmless. (F.R.C.P. 37(c)(1); *Benjamin v. B&H Education, Inc.*, 877 F.3d 1139, 1150
 5 (9th Cir. 2017); *Medina v. Multaler, Inc.*, 547 F.Supp. 1099, 1106, fn. 8 (C.D. Cal.
 6 2007). Mr. Gutierrez only overlapped with Mr. Juarez during an unidentified portion
 7 of 2012 and cannot say what SpaceX was like during the majority of Juarez's job
 8 history.

9 Plaintiffs' counsel incorrectly uses the term "Standards of Practice documents"
 10 which was never used by SpaceX employees and did not use to refer to the Avionics
 11 SOPs. (Gutierrez Dec., 2:9-10.)

12 There is nothing in his declaration which negates PVA's undisputed evidence
 13 that the MSDS sheets were kept on Juarez's computer that he used on a daily basis.
 14 (UF 62; Maxwell Dec., 2:9.) There is nothing which calls into question SpaceX's
 15 intranet site which contained all MSDS sheets, including for Arathane and Humiseal
 16 materials. (Maxwell Dec., 2:2-4; 2:17-19; Hwang Dec., 1:20-24, 1:27-2:2, Phan Dec.,
 17 1:14-18, 2:1-5.) FRE 401, 402, 403, 602.

18 Separate Statement Paragraph 94: Objection. Inadmissible hearsay. FRE 802.

19 Separate Statement Paragraph 98: Objection. The document speaks for itself.
 20 Counsel's insertion of the text "the chemical bath down the hall" is misleading,
 21 argumentative and irrelevant. The document does not state "the chemical bath down
 22 the hall." The actual contents of the document is undisputed. The document states:
 23 "5. Address and description of where injury happened ... COMPANY PREMISES;
 24 DUE TO REPETITIVE AND CONTINUOUS EXPOSURE TO ELECTRONIC
 25 PARTS CLEANING AND LEAD SO. 6. Describe the injury and part of body
 26 affected. . . . HEADACHES, ANEURYSM." (Catalona Dec., 357.) FRE 401, 402,
 27 403, 602.

28 Separate Statement Paragraph 99: Irrelevant. Mr. Juarez's subjective (or

purported) ignorance of his claims is irrelevant so long as “sufficient facts” are known which would “put a *reasonable person* on inquiry notice.” C.C.P. § 340.8; *McCoy v. Gustafson*, 180 Cal.App.4th 56, 108 (2009); *Treant USA v. Superior Court*, 2015 WL 5895495, *8 (Cal. Ct. App. 2015); *Mangini v. Aerojet-General Corporation* 230 Cal.App.3d 1125, 1150 (1991); *Simpson v. Robert Bosch Tool Corp.*, 2014 WL 985067, *4 (Cal. Ct. App. 2014). FRE 401, 402, 403, 602.

Separate Statement Paragraph 100: Irrelevant that plaintiffs’ doctors never suggested he could have been exposed to chemicals would have been impossible because they were never informed that he was working with any chemicals. (UF 81.)

Irrelevant that no one informed him that the PVA 350 was not working properly because he admitted at his deposition that SpaceX had “bypass[ed] the safety switch” which allowed the machine to run while the door was open “which is *hazardous*, but that’s the way they work,” and that SpaceX also failed to make essential safety “upgrades” to the machine which was “obsolete” because “it didn’t have the alarm system to advise the operator that the suction system was not working or pulling all of the fumes out of it.” (UF 40, 42; Catalona Dec., 450:16-20, 473:2-6.) He also testified that his complaints about safety “never went over” and admitted to his workers’ compensation doctor that he complained to SpaceX “to no avail” that he was personally exposed to “chemicals coating such as Arathane and Humiseal.” (UF 39; Catalona Dec., 402, 410, 450:17-24 (emphasis added).)

Objection to plaintiffs’ characterization of plaintiff’s deposition testimony regarding the SOPs. At his deposition, he testified that he had “no idea” what a “Standard Operating Procedure” or an “SOP” even was and could not remember receiving *any* written instructions from SpaceX. (Catalona Dec., 282:17-25, 283:25-284:5.) Now he claims not to have been “provided with a Standard Operating Procedure (“SOP”) *for programmers*” which carefully dodges whether he received the particular SOP that is relevant to this case, for “Polymeric Application on Electronic Assemblies.” This SOP was attached to PVA’s motion and was used by the entire

1 Avionics department. (Juarez Dec., 6:10-11; Hwang Dec., 1:25-26.) Although Mr.
 2 Juarez could not recall this document at his deposition, this “does not constitute
 3 affirmative evidence raising a triable issue *concerning [PVA’s undisputed] evidence*
 4 that he did receive and understand” this document. *Treatt USA v. Superior Court*,
 5 2015 WL 5895495, *12 (Cal. Ct. App. 2015)

6 Irrelevant that he never looked at PVA’s manual because he never asked to see it
 7 and there is no explanation why. (UF 16; Pl. Sep. Stmt., 79:5-7.)

8 Objection to the Manuel Gutierrez declaration which lacks foundation and
 9 contains speculation. Plaintiffs are “not allowed to use” Mr. Gutierrez’s testimony “to
 10 supply evidence on a motion” because he was not disclosed in their Rule 26
 11 disclosures, in response to PVA’s interrogatory or when asked to identify plaintiff’s
 12 coworkers at his deposition and plaintiffs have not met their burden of establishing that
 13 this nondisclosure was substantially justified or harmless. (F.R.C.P. 37(c)(1);
 14 *Benjamin v. B&H Education, Inc.*, 877 F.3d 1139, 1150 (9th Cir. 2017); *Medina v.*
 15 *Multaler, Inc.*, 547 F.Supp. 1099, 1106, fn. 8 (C.D. Cal. 2007). Mr. Gutierrez only
 16 overlapped with Mr. Juarez during an unidentified portion of 2012 and cannot say
 17 what SpaceX was like during the majority of Juarez’s job history.

18 Plaintiffs’ counsel incorrectly used the term “Standards of Practice documents”
 19 in Gutierrez’s declaration. This term was never used by SpaceX employees and did
 20 not use to refer to the Avionics SOPs. (Gutierrez Dec., 2:9-10.)

21 There is nothing in his declaration which negates PVA’s undisputed evidence
 22 that the MSDS sheets were kept on Juarez’s computer that he used on a daily basis.
 23 (UF 62; Maxwell Dec., 2:9.) There is nothing which calls into question SpaceX’s
 24 intranet site which contained all MSDS sheets, including for Arathane and Humiseal
 25 materials, and contained the most up-to-date version of the Avionics department SOPs.
 26 (Maxwell Dec., 2:2-4; 2:17-19; Hwang Dec., 1:20-24, 1:27-2:2, Phan Dec., 1:14-18,
 27 2:1-5.) FRE 401, 402, 403, 602.

28 Separate Statement Paragraph 102: Objection. Juarez’s recollection of his

1 conversation with Dr. Regev is inadmissible hearsay. FRE 802. The business record
 2 of Dr. Regev speaks for itself. Dr. Regev did not state “chemical cleaning baths”
 3 which is language added by plaintiffs’ attorney. FRE 401, 402, 403, 602, 802.

4 Separate Statement Paragraph 103: Irrelevant that no evidence to establish that
 5 no doctors “suspected his illness was related to chemical exposure.” This would be
 6 impossible because plaintiff’s doctors were never informed that he was working with
 7 any chemicals. (UF 81.) FRE 401, 402.

8 Separate Statement Paragraph 104: Objection. Mr. Juarez’s mischaracterization
 9 of this medical record is inadmissible hearsay. At his deposition, he stated that he had
 10 never even heard of Dr. Regev: “Q. This is a medical record from Isaac Regev, M.D.
 11 Do you remember who that guy is? A. No, sir.” (Catalona Dec., 337:22-24.) In any
 12 event, the actual medical record speaks for itself. The actual medical record states:
 13 “[t]he patient believes his headaches were related to toxic exposure [and] believed they
 14 were associated with chemicals used to clean electrical parts.” (UF 38, 50-51;
 15 Catalona Dec., 370.) At his deposition, Juarez stated that these chemicals included
 16 Humiseal thinner which was also used inside the PVA 350. (UF 45, 52-53.) FRE 401,
 17 402, 403, 602, 802.

18 Separate Statement Paragraph 105: Objection. The document speaks for itself
 19 and does not state “the chemical baths down the hall.” The actual contents of the
 20 document are undisputed. The actual medical record states: “[t]he patient believes his
 21 headaches were related to toxic exposure [and] believed they were associated with
 22 chemicals used to clean electrical parts.” (UF 38, 50-51; Catalona Dec., 370.) At his
 23 deposition, Juarez stated that these chemicals included Humiseal thinner which was
 24 also used inside the PVA 350. (UF 45, 52-53.) FRE 401, 402, 403, 602.

25 Separate Statement Paragraph 107: Objection. These out of court statements
 26 consist of inadmissible hearsay. The statements also lack relevance and are without
 27 foundation because Mr. Juarez “did not remember who suggested this.” FRE 401, 402,
 28 403, 602, 802.

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1 Separate Statement Paragraph 108: Objection. The out of court conversation
 2 with a “Francisco” is inadmissible hearsay. PVA does not object to the contents of the
 3 emails which speak for themselves and are undisputed. FRE 401, 402, 403, 602, 802.

4 Separate Statement Paragraph 110: Objection. Inadmissible hearsay. PVA does
 5 not object to the contents of the actual medical record which speaks for itself and is
 6 undisputed, but to plaintiff’s one-sided characterization of that conversation which is
 7 inadmissible hearsay. This purported fact is also not relevant or material because
 8 plaintiffs do not allege that Mr. Juarez’s purported “reactive airways disease and
 9 rhinitis” were caused by PVA’s negligence or the PVA 350 in the complaint.
 10 (Catalona Dec., 62:11-15.) FRE 401, 402, 403, 602, 802.

11 Separate Statement Paragraph 111: Irrelevant that no one at SpaceX got sick
 12 with the exception of plaintiffs’ alleged injuries. This does not mean that Juarez did
 13 not think anyone had done anything wrong. He admitted at his deposition that SpaceX
 14 had “bypass[ed] the safety switch” which allowed the machine to run while the door
 15 was open “which is *hazardous*, but that’s the way they work,” and that SpaceX also
 16 failed to make essential safety “upgrades” to the machine which was “obsolete”
 17 because “it didn’t have the alarm system to advise the operator that the suction system
 18 was not working or pulling all of the fumes out of it.” (UF 40, 42; Catalona Dec.,
 19 450:16-20, 473:2-6.) He also testified that his complaints about safety “never went
 20 over” and admitted to his workers’ compensation doctor that he complained to SpaceX
 21 “to no avail” that he was personally exposed to “chemicals coating such as Arathane
 22 and Humiseal.” (UF 39; Catalona Dec., 402, 410, 450:17-24 (emphasis added).) FRE
 23 401, 402, 403.

24 Separate Statement Paragraph 112: Irrelevant Mr. Juarez’s subjective (or
 25 purported) ignorance of his claims is irrelevant so long as “sufficient facts” are known
 26 which would “put a *reasonable person* on inquiry notice.” C.C.P. § 340.8; *McCoy v.*
 27 *Gustafson*, 180 Cal.App.4th 56, 108 (2009); *Trealt USA v. Superior Court*, 2015 WL
 28 5895495, *8 (Cal. Ct. App. 2015); *Mangini v. Aerojet-General Corporation* 230

1 Cal.App.3d 1125, 1150 (1991); *Simpson v. Robert Bosch Tool Corp.*, 2014 WL
 2 985067, *4 (Cal. Ct. App. 2014.) FRE 401, 402, 403.

3 Separate Statement Paragraph 114: Objection. There is no evidence cited to
 4 support plaintiff's supposed "realization." The Ruben Juarez declaration does not
 5 mention any such realization or discuss his deposition or discovery from the workers'
 6 compensation action. Plaintiffs' characterization of this testimony is argument and not
 7 permitted in plaintiffs' Separate Statement. PVA does not object to the actual contents
 8 of plaintiff's deposition testimony. FRE 401, 402, 403.

9 Separate Statement Paragraph 117: Irrelevant, argumentative and no
 10 foundation. The "door bypass switch" did not shut off any safety features of the
 11 machine. When it was sold, the PVA 350 was equipped with both door interlocks and
 12 air flow sensors. (UF 12; Urquhart Dec., 2:23-3:6, 21, 86, 99, 130.) PVA's 2009 sales
 13 records cited in Undisputed Fact 12 document a pre-sale "safety check" which
 14 confirmed that (1) "All interlocks tested and confirmed operational," and (2) "low
 15 level exhaust sensor tested and confirmed operational." (Urquhart Dec., 21.) Neither
 16 plaintiff nor Dr. Stevick have any idea how PVA configured its machine in 2009 and
 17 Stevick's testimony that the machine's "interlocks" and "air flow sensors" were not
 18 present proves that it had been altered after it was sold which is completely irrelevant
 19 to plaintiff's negligence and product liability claims against PVA. (Stevick Dec., 6:1-
 20 7.) Notably, Dr. Stevick has never examined or tested the machine at issue in this
 21 case, or any PVA 350 in any way. (Stevick Dec., 3:15-17.) In contrast, PVA's
 22 Director of Applications Engineering, Jonathan Urquhart, actually does have personal
 23 knowledge about what the machine was like in 2009 and there is no competent
 24 evidence which challenges that testimony. FRE 401, 402, 403, 602.

25 Separate Statement Paragraph 118: Irrelevant. Plaintiff testified that he knew
 26 the way he used the PVA 350 was hazardous. FRE 401, 402.

27 Separate Statement Paragraph 120: Irrelevant and argumentative. This would
 28 be impossible because plaintiff's doctors were never informed that he was working

1 with any chemicals. (UF 81.) FRE 401, 402, 403.

2 Separate Statement Paragraph 120: Objection. Irrelevant and immaterial. This
3 would be impossible because plaintiff's doctors were never informed that he was
4 working with any chemicals. (UF 81.) FRE 401, 402.

5 Separate Statement Paragraph 124: Objection. Irrelevant and lack of
6 foundation. The machine is referred to as a "work cell" in PVA's manual and the
7 conformal coating industry. (UF 3.) Plaintiff has no foundation to dispute this
8 terminology because he never read the manual, and the fact that he used different
9 terminology in the aerospace industry to refer to the machine is irrelevant. FRE 401,
10 402, 602.

11 Separate Statement Paragraph 125: Objection. Irrelevant and lack of
12 foundation. The machine is referred to as a "work cell" in PVA's manual and the
13 conformal coating industry. (UF 3.) Plaintiff has no foundation to dispute this
14 terminology because he never read the manual, and the fact that he used different
15 terminology in the aerospace industry to refer to the machine is irrelevant. FRE 401,
16 402, 602.

17 Separate Statement Paragraph 129: Objection. Vague, ambiguous, irrelevant
18 and immaterial. Plaintiff has no foundation to testify how the PVA 350 was equipped
19 in 2009. For the purposes of this motion, it is undisputed that this feature was not
20 present in 2012 when plaintiff started working at SpaceX. FRE 401, 402, 403, 602.

21 Separate Statement Paragraph 130: Objection. Vague, ambiguous, irrelevant
22 and immaterial. It is irrelevant whether SpaceX "provided" the manual to Juarez or
23 that it was purportedly not on his computer. Whether the PVA manual was stored on
24 plaintiff's computer is not important because SpaceX maintained all manufacturer
25 manuals and specifications for its purchased equipment, including the PVA 350, "at its
26 Hawthorne campus." (UF 26; Hwang Dec., 1:15-17.) To read PVA's manual, which
27 plaintiffs admit PVA did provide to SpaceX, all plaintiff had to do was ask but he
28 never asked to see it and there is no explanation why. (UF 16; Pl. Sep. Stmt., 79:5-7.)

1 Objection to the Mendoza and Gutierrez declaration which lack foundation and
 2 contain speculation. Plaintiffs are “not allowed to use” either witness “to supply
 3 evidence on a motion” because they were not disclosed in plaintiffs’ Rule 26
 4 disclosures, in response to PVA’s interrogatory or when asked to identify plaintiff’s
 5 coworkers at his deposition and plaintiffs have not met their burden of establishing that
 6 this nondisclosure was substantially justified or harmless. (F.R.C.P. 37(c)(1);
 7 Benjamin v. B&H Education, Inc., 877 F.3d 1139, 1150 (9th Cir. 2017); Medina v.
 8 Multaler, Inc., 547 F.Supp. 1099, 1106, fn. 8 (C.D. Cal. 2007).

9 Mr. Gutierrez only overlapped with Mr. Juarez during an unidentified portion of
 10 2012 and cannot say what SpaceX was like during the majority of Juarez’s job history.

11 Mr. Mendoza is unable to testify that he worked with Ruben Juarez at any time
 12 or ever saw him perform work. Thus, he could not have spent any significant amount
 13 of time in the conformal coating room where Juarez worked for 60 percent of his 60-
 14 hour weeks at SpaceX. Plaintiff Juarez was unable to recall working with either
 15 Gutierrez or Mendoza. FRE 401, 402, 403, 602.

16 Separate Statement Paragraph 131: Objection. Vague, ambiguous, irrelevant
 17 and immaterial. It is irrelevant whether the manual was purportedly not on his
 18 computer Whether the PVA manual was stored on plaintiff’s computer is not important
 19 because SpaceX maintained all manufacturer manuals and specifications for its
 20 purchased equipment, including the PVA 350, “at its Hawthorne campus.” (UF 26;
 21 Hwang Dec., 1:15-17.) To read PVA’s manual, which plaintiffs admit PVA did
 22 provide to SpaceX, all plaintiff had to do was ask but he never asked to see it and there
 23 is no explanation why. (UF 16; Pl. Sep. Stmt., 79:5-7.) FRE 401, 402, 403, 602.

24 Separate Statement Paragraph 132: Objection. Vague, ambiguous, irrelevant
 25 and immaterial. The “door bypass switch” did not shut off any safety features of the
 26 machine. When it was sold, the PVA 350 was equipped with both door interlocks and
 27 air flow sensors. (UF 12; Urquhart Dec., 2:23-3:6, 21, 86, 99, 130.) PVA’s 2009 sales
 28 records cited in Undisputed Fact 12 document a pre-sale “safety check” which

1 confirmed that (1) “All interlocks tested and confirmed operational,” and (2) “low
 2 level exhaust sensor tested and confirmed operational.” (Urquhart Dec., 21.) Neither
 3 plaintiff nor Dr. Stevick have any idea, much less foundation to testify, how PVA
 4 configured its machine in 2009 and Stevick’s testimony that the machine’s “interlocks”
 5 and “air flow sensors” were not present proves that it had been altered after it was sold
 6 which is completely irrelevant to plaintiff’s negligence and product liability claims
 7 against PVA. (Stevick Dec., 6:1-7.) Notably, Dr. Stevick has never examined or
 8 tested the machine at issue in this case, or any PVA 350 in any way. (Stevick Dec.,
 9 3:15-17.) In contrast, PVA’s Director of Applications Engineering, Jonathan
 10 Urquhart, actually does have personal knowledge about what the machine was like in
 11 2009 and there is no competent evidence which challenges that testimony.

12 Plaintiffs’ allegations regarding PVA’s training are not material to PVA’s
 13 motion because they concern plaintiffs’ general negligence claim which is not
 14 challenged in PVA’s motion and they do not change the fact that Juarez indisputably
 15 did not read PVA’s manual, which bars his failure to warn claims regardless of any
 16 “training” PVA allegedly provided plaintiff regarding a different machine (the PVA
 17 **650**) in 2011 before he worked for SpaceX, and two years after PVA sold the PVA 350
 18 to SpaceX. FRE 401, 402, 403, 602.

19 Separate Statement Paragraph 133: Irrelevant and immaterial. The “door bypass
 20 switch” did not shut off any safety features of the machine. When it was sold, the
 21 PVA 350 was equipped with both door interlocks and air flow sensors. (UF 12;
 22 Urquhart Dec., 2:23-3:6, 21, 86, 99, 130.) PVA’s 2009 sales records cited in
 23 Undisputed Fact 12 document a pre-sale “safety check” which confirmed that (1) “All
 24 interlocks tested and confirmed operational,” and (2) “low level exhaust sensor tested
 25 and confirmed operational.” (Urquhart Dec., 21.) Neither plaintiff nor Dr. Stevick
 26 have foundation or any idea how PVA configured its machine in 2009. Notably, Dr.
 27 Stevick has never examined or tested the machine at issue in this case, or any PVA 350
 28 in any way. (Stevick Dec., 3:15-17.) FRE 401, 402, 403, 602.

1 Separate Statement Paragraph 134: Objection. Contradicts prior deposition
 2 testimony that SpaceX had “bypass[ed] the safety switch” which allowed the machine
 3 to run while the door was open “which is *hazardous*, but that’s the way they work,”
 4 and that SpaceX also failed to make essential safety “upgrades” to the machine which
 5 was “obsolete” because “it didn’t have the alarm system to advise the operator that the
 6 suction system was not working or pulling all of the fumes out of it.” (UF 40, 42;
 7 Catalonia Dec., 450:16-20, 473:2-6.) He also testified that these complaints “never
 8 went over” at SpaceX and admitted to his workers’ compensation doctor that he told
 9 SpaceX he was personally exposed to “chemicals coating such as Arathane and
 10 Humiseal ... *to no avail*.” (UF 39; Catalonia Dec., 402, 410, 450:17-24 (emphasis
 11 added).)

12 No reasonable jury could believe that plaintiff’s prior identification of hazards
 13 regarding the machine was simply a mistake and the truth is that he never suspected
 14 SpaceX (or PVA) had done anything wrong. The fact that his admissions came after
 15 he filed his workers’ compensation claim in 2014 and after his attorneys received the
 16 MSDS sheets in that proceeding is irrelevant because he admitted that he first believed
 17 the machine and its chemicals were “hazardous” in 2012-2014 when reported his
 18 concerns to SpaceX. *Yeager, supra*, at 1980. *Kennedy v. Allied Mut. Ins. Co.*, 952
 19 F.2d 262, 266 (9th Cir. 1991) (“The general rule in the Ninth Circuit is that a party
 20 cannot create an issue of fact by an affidavit contradicting his prior deposition
 21 testimony.”); *Gonzales v. City of Martinez*, 638 F.Supp.2d 1147, 1150, fn. 3, 1151, fn.
 22 5, 1154, fn. 7, 1157, fn. 8 (N.D. Cal. 2009) (granting summary judgment and striking
 23 numerous unexplained contradictions in plaintiff’s declaration); *Rojas v. Roman*
 24 *Catholic Dioceses of Rochester*, 660 F.3d 98, 105 (2nd Cir. 2011) (holding plaintiff’s
 25 “new allegations [in a declaration which were] directly contradicted by her prior sworn
 26 statements and judicial admissions, were properly rejected by the District Court after a
 27 careful consideration of the record before it.”) FRE 401, 402, 403, 602.

28 Separate Statement Paragraph 135: Misleading and argumentative. Whether

1 Mr. Juarez had formal or informal “chemical training” which is not explained, is
 2 irrelevant because there is no factual dispute that he took SpaceX’s Hazard
 3 Communication Course which is not mentioned in his declaration. (Pl. Sep. Stmt.,
 4 293:27-298:13.)

5 Objection that he “did not know about the toxicity of the chemicals he was
 6 working with” which is unambiguously contradicted by his deposition testimony that
 7 SpaceX had “bypass[ed] the safety switch” which allowed the machine to run while
 8 the door was open “which is hazardous, but that’s the way they work,” and that
 9 SpaceX also failed to make essential safety “upgrades” to the machine which was
 10 “obsolete” because “it didn’t have the alarm system to advise the operator that the
 11 suction system was not working or pulling all of the fumes out of it.” (UF 40, 42;
 12 Catalona Dec., 450:16-20, 473:2-6.) He also testified that his complaints “never went
 13 over” at SpaceX and admitted to his workers’ compensation doctor that he complained
 14 about being exposed to “chemicals coating such as Arathane and Humiseal ... to no
 15 avail.” (UF 39; Catalona Dec., 402, 410, 450:17-24 (emphasis added).) Again, no
 16 reasonable jury could believe that his prior identification of hazards regarding the
 17 machine was simply a mistake and the truth is that he never suspected SpaceX (or
 18 PVA) had done anything wrong. The fact that his admissions came after he filed his
 19 workers’ compensation claim in 2014 and after his attorneys received the MSDS
 20 sheets in that proceeding is irrelevant because he admitted that he first believed the
 21 machine and its chemicals were “hazardous” in 2012-2014 when reported his concerns
 22 to SpaceX. *Yeager, supra*, at 1980. *Kennedy v. Allied Mut. Ins. Co.*, 952 F.2d 262,
 23 266 (9th Cir. 1991) (“The general rule in the Ninth Circuit is that a party cannot create
 24 an issue of fact by an affidavit contradicting his prior deposition testimony.”);
 25 *Gonzales v. City of Martinez*, 638 F.Supp.2d 1147, 1150, fn. 3, 1151, fn. 5, 1154, fn. 7,
 26 1157, fn. 8 (N.D. Cal. 2009) (granting summary judgment and striking numerous
 27 unexplained contradictions in plaintiff’s declaration); *Rojas v. Roman Catholic*
 28 *Dioceses of Rochester*, 660 F.3d 98, 105 (2nd Cir. 2011) (holding plaintiff’s “new

1 allegations [in a declaration which were] directly contradicted by her prior sworn
 2 statements and judicial admissions, were properly rejected by the District Court after a
 3 careful consideration of the record before it.”) FRE 401, 402, 403, 602.

4 Separate Statement Paragraph 136: Irrelevant and immaterial that he did not
 5 “know” that the machine was defective. *Treatt USA v. Superior Court*, 2015 WL
 6 5895495, *8 (Cal. Ct. App. 2015) (holding cause of action accrues “even if the
 7 plaintiff himself is subjectively oblivious.”) “Subjective suspicion is not required. If a
 8 person becomes aware of facts which would make a reasonably prudent person
 9 suspicious, he or she has a duty to investigate further and is charged with knowledge of
 10 matters which would have been revealed by such an investigation.” *McCoy v.*
 11 *Gustafson*, 180 Cal.App.4th 56, 108 (2009); *Norgart v. Upjohn Co.*, 21 Cal.4th 383,
 12 397-398 (1999) (“[H]e need not know the ‘specific ‘facts’ necessary to establish’ the
 13 cause of action; rather, he may seek to learn such facts through the ‘process
 14 contemplated by pretrial discovery.’”) FRE 401, 402, 403, 602.

15 Separate Statement Paragraph 137: Irrelevant that this is now Mr. Juarez’s
 16 current “belief.” Objection that this belief is supported by any evidence or adequate
 17 foundation because he was not working at SpaceX at that time and his belief is
 18 evidently supported only by inadmissible hearsay from Mr. Mendoza. Objection that
 19 plaintiff’s unsupported “belief” is relevant or material to PVA’s motion.

20 Objection to reference to “chemical containers” allegedly changing “in the end
 21 of 2011/2012” which is vague and ambiguous and immaterial to PVA’s motion.

22 Objection to the Mendoza declaration which lacks foundation and contains
 23 speculation. Plaintiffs are “not allowed to use” Mr. Mendoza “to supply evidence on a
 24 motion” because he was not disclosed in plaintiffs’ Rule 26 disclosures, in response to
 25 PVA’s interrogatory or when plaintiff was asked to identify plaintiff’s coworkers at his
 26 deposition and plaintiffs have not met their burden of establishing that this
 27 nondisclosure was substantially justified or harmless. (F.R.C.P. 37(c)(1); *Benjamin v.*
 28 *B&H Education, Inc.*, 877 F.3d 1139, 1150 (9th Cir. 2017); *Medina v. Multaler, Inc.*,

1 547 F.Supp. 1099, 1106, fn. 8 (C.D. Cal. 2007).

2 Mr. Mendoza is unable to testify that he worked with Ruben Juarez at any time
3 or ever saw him perform work. Plaintiff Juarez also was unable to recall ever working
4 with Mr. Mendoza at SpaceX at his deposition. Thus, Mendoza could not have spent
5 any significant amount of time in the conformal coating room where Juarez worked for
6 60 percent of his 60-hour weeks at SpaceX. FRE 401, 402, 403, 602, 802.

7 Separate Statement Paragraph 138: It is irrelevant and immaterial that SpaceX
8 purportedly started using Humiseal in some capacity in 2010. Plaintiffs are “not
9 allowed to use” Mr. Mendoza “to supply evidence on a motion” pursuant to F.R.C.P.
10 37(c)(1). *Benjamin v. B&H Education, Inc.*, 877 F.3d 1139, 1150 (9th Cir. 2017);
11 *Medina v. Multaler, Inc.*, 547 F.Supp. 1099, 1106, fn. 8 (C.D. Cal. 2007). FRE 401,
12 402.

13 Separate Statement Paragraph 139: Objection. There is no admissible evidence
14 or foundation to establish that any “Humiseal” materials including Humiseal thinner
15 were ever “replaced.” Plaintiff’s statement that Arathane “was introduced by David
16 Hwang to replace the original chemical, *which I later found out* was Humiseal” has no
17 foundation and constitutes inadmissible hearsay. FRE 401, 402, 403, 602, 802.

18 Separate Statement Paragraph 140: Objection. There is no admissible evidence
19 or foundation to establish that there was any “transition” or that PVA was aware of any
20 “transition” away from using “Humiseal” materials including Humiseal thinner.
21 Plaintiff’s statement that Arathane “was introduced by David Hwang to replace the
22 original chemical, *which I later found out* was Humiseal” has no foundation and
23 constitutes inadmissible hearsay. FRE 401, 402, 403, 602, 802.

24 Separate Statement Paragraph 141: Irrelevant that PVA later learned SpaceX
25 was using certain chemicals. Strict liability is prohibited even when it is “foreseeable
26 that the products will be used together,” unless such use is actually necessary. *O’Neil*
27 *v. Crane Co.*, 53 Cal.4th 335, 361 (2012). Plaintiffs do not address this authority.
28 FRE 401, 402.

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1 Separate Statement Paragraph 142: Irrelevant. This evidence is relevant to
 2 plaintiffs' general negligence claims which are not addressed in PVA's motion. Under
 3 California law, strict liability is prohibited even when it is "foreseeable that the
 4 products will be used together," unless such use is actually "necessary." *O'Neil v.*
 5 *Crane Co.*, 53 Cal.4th 335, 361 (2012). Plaintiffs do not address this authority. FRE
 6 401, 402.

7 Separate Statement Paragraph 144: Whether plaintiff has no chemistry training
 8 is irrelevant and immaterial. Objection to the conclusion that this means he "was not
 9 allowed to mix chemical compounds." There is no evidence that mixing chemical
 10 compounds required chemistry training. His statements are also contradicted by his
 11 sworn deposition testimony that he mixed separate chemicals to create different
 12 compounds as part of his job, including Arathane and Humiseal materials. (Juarez
 13 Depo., March 30, 2015, Catalona Dec., 448:22-449:4, 458:14-459:8; Juarez Depo.,
 14 March 8, 2018, Catalona Dec., 268:1-3, 268:15-17, 269:8-18.) No reasonable jury
 15 could believe plaintiff's explanation for this contradiction which is that his prior
 16 testimony only meant that he mixed a "single container" of chemicals. (Juarez Dec.,
 17 5:26.) This does not make sense because he testified at his deposition that he mixed
 18 the Humiseal conformal coating material with the Humiseal thinner that "we talked
 19 about before," and also that he had to mix Arathane Part A with Arathane part B which
 20 were "separate chemicals" that "would start to cure rather quickly" when mixed.
 21 (Catalona Dec., 269:10-15, 459:5-8.)

22 Objection to the Mendoza and Gutierrez declaration which lack foundation and
 23 contain speculation. Plaintiffs are "not allowed to use" either witness "to supply
 24 evidence on a motion" because they were not disclosed in plaintiffs' Rule 26
 25 disclosures, in response to PVA's interrogatory or when asked to identify plaintiff's
 26 coworkers at his deposition and plaintiffs have not met their burden of establishing that
 27 this nondisclosure was substantially justified or harmless. (F.R.C.P. 37(c)(1);
 28 *Benjamin v. B&H Education, Inc.*, 877 F.3d 1139, 1150 (9th Cir. 2017); *Medina v.*

1 *Multaler, Inc.*, 547 F.Supp. 1099, 1106, fn. 8 (C.D. Cal. 2007).

2 Mr. Gutierrez only overlapped with Mr. Juarez during an unidentified portion of
3 2012 and cannot say what SpaceX was like during the majority of Juarez's job history.

4 Mr. Mendoza is unable to testify that he worked with Ruben Juarez at any time
5 or ever saw him perform work. Thus, he could not have spent any significant amount
6 of time in the conformal coating room where Juarez worked for 60 percent of his 60-
7 hour weeks at SpaceX. Plaintiff Juarez was unable to recall working with either
8 Gutierrez or Mendoza.

9 Also irrelevant is the fact that these witnesses "never saw Ruben Juarez mix
10 chemicals." Mendoza and Gutierrez have no foundation to testify about plaintiff's
11 "hand mixing" of chemicals because they were not part of the team that designed
12 SpaceX's conformal coating formula in 2012. (UF 19-20; Maxwell Dec., 2:21-23.)
13 FRE 401, 402, 403, 602.

14 Separate Statement Paragraph 145: Objection. This statement is contradicted
15 by plaintiff's sworn deposition testimony that he mixed separate chemicals to create
16 different compounds as part of his job, including Arathane and Humiseal materials.
17 (Juarez Depo., March 30, 2015, Catalona Dec., 448:22-449:4, 458:14-459:8; Juarez
18 Depo., March 8, 2018, Catalona Dec., 268:1-3, 268:15-17, 269:8-18. No reasonable
19 jury could believe plaintiff's explanation for this contradiction which is that his prior
20 testimony only meant that he mixed a "single container" of chemicals. (Juarez Dec.,
21 5:26.) This does not make sense because he testified at his deposition that he mixed
22 the Humiseal conformal coating material with the Humiseal thinner that "we talked
23 about before," and also that he had to mix Arathane Part A with Arathane part B which
24 were "separate chemicals" that "would start to cure rather quickly" when mixed.
25 (Catalona Dec., 269:10-15, 459:5-8.)

26 Objection to the Mendoza and Gutierrez declaration which lack foundation and
27 contain speculation. Plaintiffs are "not allowed to use" either witness "to supply
28 evidence on a motion" because they were not disclosed in plaintiffs' Rule 26

disclosures, in response to PVA's interrogatory or when asked to identify plaintiff's coworkers at his deposition and plaintiffs have not met their burden of establishing that this nondisclosure was substantially justified or harmless. (F.R.C.P. 37(c)(1); *Benjamin v. B&H Education, Inc.*, 877 F.3d 1139, 1150 (9th Cir. 2017); *Medina v. Multaler, Inc.*, 547 F.Supp. 1099, 1106, fn. 8 (C.D. Cal. 2007).

Juarez could not remember either witness as a coworker at SpaceX. Mr. Gutierrez only overlapped with Mr. Juarez during an unidentified portion of 2012 and cannot say what SpaceX was like during the majority of Juarez's job history.

Mr. Mendoza is unable to testify that he worked with Ruben Juarez at any time or ever saw him perform work. Thus, he could not have spent any significant amount of time in the conformal coating room where Juarez worked for 60 percent of his 60-hour weeks at SpaceX.

Also irrelevant is the fact that these witnesses "never saw Ruben Juarez mix chemicals." Mendoza and Gutierrez have no foundation to testify about plaintiff's "hand mixing" of chemicals because they were not part of the team that designed SpaceX's conformal coating formula in 2012. (UF 19-20; Maxwell Dec., 2:21-23.) FRE 401, 402, 403, 602.

Separate Statement Paragraph 146: Plaintiffs are "not allowed to use" witness Gutierrez "to supply evidence on a motion" because he was not disclosed in plaintiffs' Rule 26 disclosures, in response to PVA's interrogatory or when asked to identify plaintiff's coworkers at his deposition and plaintiffs have not met their burden of establishing that this nondisclosure was substantially justified or harmless. (F.R.C.P. 37(c)(1); *Benjamin v. B&H Education, Inc.*, 877 F.3d 1139, 1150 (9th Cir. 2017); *Medina v. Multaler, Inc.*, 547 F.Supp. 1099, 1106, fn. 8 (C.D. Cal. 2007). FRE 401, 402, 403, 602.

Separate Statement Paragraph 147: Plaintiffs are "not allowed to use" witness Gutierrez "to supply evidence on a motion" because he was not disclosed in plaintiffs' Rule 26 disclosures, in response to PVA's interrogatory or when asked to identify

1 plaintiff's coworkers at his deposition and plaintiffs have not met their burden of
 2 establishing that this nondisclosure was substantially justified or harmless. (F.R.C.P.
 3 37(c)(1); *Benjamin v. B&H Education, Inc.*, 877 F.3d 1139, 1150 (9th Cir. 2017);
 4 *Medina v. Multaler, Inc.*, 547 F.Supp. 1099, 1106, fn. 8 (C.D. Cal. 2007). FRE 401,
 5 402, 403, 602.

6 Separate Statement Paragraph 148: Objection that there is admissible, relevant
 7 evidence which can establish that Arathane was a "substitute" for any "Humiseal"
 8 materials including Humiseal thinner. This suggestion has no foundation and is based
 9 on inadmissible hearsay that Juarez "found out" without explanation. FRE 401, 402,
 10 403, 602.

11 Separate Statement Paragraph 149: Irrelevant that Juarez is "not the process
 12 engineer or materials engineer" or that they would also have mixed chemicals which is
 13 immaterial. There is no evidence in the record that these individuals were the *only*
 14 individuals authorized to, or capable of, mixing chemicals.

15 Objection to the Mendoza declaration which lacks foundation and contain
 16 speculation. Plaintiffs are "not allowed to use" Mr. Mendoza "to supply evidence on a
 17 motion" because he was not disclosed in plaintiffs' Rule 26 disclosures, in response to
 18 PVA's interrogatory or when plaintiff was asked to identify plaintiff's coworkers at his
 19 deposition and plaintiffs have not met their burden of establishing that this
 20 nondisclosure was substantially justified or harmless. (F.R.C.P. 37(c)(1); *Benjamin v.*
 21 *B&H Education, Inc.*, 877 F.3d 1139, 1150 (9th Cir. 2017); *Medina v. Multaler, Inc.*,
 22 547 F.Supp. 1099, 1106, fn. 8 (C.D. Cal. 2007). Mr. Mendoza is unable to testify that
 23 he worked with Ruben Juarez at any time or ever saw him perform work. Plaintiff
 24 Juarez also was unable to recall ever working with Mr. Mendoza at SpaceX at his
 25 deposition. Thus, Mendoza could not have spent any significant amount of time in the
 26 conformal coating room where Juarez worked for 60 percent of his 60-hour weeks at
 27 SpaceX. FRE 401, 402, 403, 602.

28 Separate Statement Paragraph 150: Irrelevant that plaintiff "installed the

1 separate dispensing canisters and materials lines.” Objection to the suggestion that he
 2 “did not mix any chemical compounds” which is unambiguously contradicted by his
 3 sworn deposition testimony that he mixed separate chemicals to create different
 4 compounds as part of his job, including Arathane and Humiseal materials. (Juarez
 5 Depo., March 30, 2015, Catalona Dec., 448:22-449:4, 458:14-459:8; Juarez Depo.,
 6 March 8, 2018, Catalona Dec., 268:1-3, 268:15-17, 269:8-18. No reasonable jury
 7 could believe plaintiff’s explanation for this contradiction which is that his prior
 8 testimony only meant that he mixed a “single container” of chemicals. (Juarez Dec.,
 9 5:26.) This does not make sense because he testified at his deposition that he mixed
 10 the Humiseal conformal coating material with the Humiseal thinner that “we talked
 11 about before,” and also that he had to mix Arathane Part A with Arathane part B which
 12 were “separate chemicals” that “would start to cure rather quickly” when mixed.
 13 (Catalona Dec., 269:10-15, 459:5-8.)

14 Objection to the Manuel Gutierrez declaration which lacks foundation and
 15 contains speculation. Plaintiffs are “not allowed to use” Mr. Gutierrez’s testimony “to
 16 supply evidence on a motion” because he was not disclosed in their Rule 26
 17 disclosures, in response to PVA’s interrogatory or when asked to identify plaintiff’s
 18 coworkers at his deposition and plaintiffs have not met their burden of establishing that
 19 this nondisclosure was substantially justified or harmless. (F.R.C.P. 37(c)(1);
 20 *Benjamin v. B&H Education, Inc.*, 877 F.3d 1139, 1150 (9th Cir. 2017); *Medina v.*
 21 *Multaler, Inc.*, 547 F.Supp. 1099, 1106, fn. 8 (C.D. Cal. 2007). Mr. Gutierrez only
 22 overlapped with Mr. Juarez during an unidentified portion of 2012 and cannot say
 23 what SpaceX was like during the majority of Juarez’s job history.

24 Also irrelevant is the fact that these witnesses “never saw Ruben Juarez mix
 25 chemicals.” Mendoza and Gutierrez have no foundation to testify about plaintiff’s
 26 “hand mixing” of chemicals because they were not part of the team that designed
 27 SpaceX’s conformal coating formula in 2012. (UF 19-20; Maxwell Dec., 2:21-23.)
 28 FRE 401, 402, 403, 602.

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1 Separate Statement Paragraph 151: Objection. Irrelevant and misleading.

2 Irrelevant that he was not provided with an SOP specifically “for programmers” for
 3 “any assembly area” because SpaceX did not have any such SOPs. This evidence does
 4 not alter the fact that he did receive the SOP that is relevant to this case, for
 5 “Polymeric Application on Electronic Assemblies.” This SOP which PVA submitted
 6 with its motion for summary judgment was used by the entire Avionics department and
 7 contained SpaceX’s instructions for operating PVA’s machine. (Juarez Dec., 6:10-11;
 8 Hwang Dec., 1:25-26.) When asked directly about this particular SOP at his
 9 deposition, plaintiff testified that he had “no idea” what a “Standard Operating
 10 Procedure” or “SOP” even was, and could not remember ever receiving any written
 11 instructions from SpaceX. (Catalona Dec., 282:17-25, 283:25-284:5.) Critically,
 12 plaintiffs have put forward no evidence that negates the relevant SOP that required
 13 Juarez to program the PVA 350 according to “the operating instructions in the PVA
 14 manual.” (UF 25; Hwang Dec., 11.)

15 Objection to the Mendoza and Gutierrez declarations which lack foundation and
 16 contain speculation. Plaintiffs are “not allowed to use” either witness “to supply
 17 evidence on a motion” because they were not disclosed in plaintiffs’ Rule 26
 18 disclosures, in response to PVA’s interrogatory or when asked to identify plaintiff’s
 19 coworkers at his deposition and plaintiffs have not met their burden of establishing that
 20 this nondisclosure was substantially justified or harmless. (F.R.C.P. 37(c)(1);
 21 *Benjamin v. B&H Education, Inc.*, 877 F.3d 1139, 1150 (9th Cir. 2017); *Medina v.*
 22 *Multaler, Inc.*, 547 F.Supp. 1099, 1106, fn. 8 (C.D. Cal. 2007). Mr. Gutierrez only
 23 overlapped with Mr. Juarez during an unidentified portion of 2012 and cannot say
 24 what SpaceX was like during the majority of Juarez’s job history. Mr. Mendoza is
 25 unable to testify that he worked with Ruben Juarez at any time or ever saw him
 26 perform work. Thus, he could not have spent any significant amount of time in the
 27 conformal coating room where Juarez worked for 60 percent of his 60-hour weeks at
 28 SpaceX. Plaintiff Juarez was unable to recall working with either Gutierrez or

1 Mendoza.

2 Plaintiffs' counsel incorrectly used the term "Standards of Practice documents"
3 in Gutierrez's declaration. This term was never used by SpaceX employees and did
4 not use to refer to the Avionics SOPs. (Gutierrez Dec., 2:9-10.)

5 There is nothing in either declaration which negates PVA's undisputed evidence
6 that the most up-to-date version of the Avionics department SOPs were kept on
7 Juarez's computer that he used on a daily basis. (UF 62; Maxwell Dec., 2:2-4; 2:17-
8 19.) FRE 401, 402, 403, 602.

9 Separate Statement Paragraph 155: Irrelevant that the PVA 350 did not contain
10 a conveyor belt. Regarding the other features listed, there is nothing which indicates
11 that any such features were necessary for safety and are therefore irrelevant. Dr.
12 Stevick also has no foundation to state how the PVA 350 was configured when it was
13 sold to SpaceX in 2009. To the extent that any purported features mentioned were
14 "safety features" and were altered or removed after it was sold is irrelevant to
15 plaintiff's negligence and product liability claims against PVA. Notably, Dr. Stevick
16 has never examined or tested the machine at issue in this case, or any PVA 350 in any
17 way. (Stevick Dec., 3:15-17.) PVA's Director of Applications Engineering,
18 Jonathan Urquhart, actually does have personal knowledge about what the machine
19 was like in 2009 and there is no competent evidence which challenges that testimony.
20 FRE 401, 402, 403, 602.

21 Separate Statement Paragraph 157: Inadmissible hearsay. Also irrelevant to the
22 issues in PVA's motion which do not concern plaintiffs' general negligence claims.
23 FRE 401, 402, 802.

24 Separate Statement Paragraph 158: Irrelevant because plaintiff never read
25 PVA's manual and there is therefore "no conceivable causal connection between the
26 representations or omissions that accompanied the product and plaintiff's injury."
27 *Ramirez v. Plough, Inc.*, 6 Cal.4th 539, 556 (1993). Moreover, there is no evidence that
28 facemasks and ventilators were required when the machine was sold: "*Unless it has*

1 *been physically altered*, the machine is programmed to stop and will stop when the
 2 door is opened or ventilation is shut off, no matter what mode it is in.” (Urquhart Dec.,
 3 3:7-10.) FRE 401, 402, 403, 602.

4 Separate Statement Paragraph 159: Irrelevant because plaintiff never read
 5 PVA’s manual and there is therefore “no conceivable causal connection between the
 6 representations or omissions that accompanied the product and plaintiff’s injury.”
 7 *Ramirez v. Plough, Inc.*, 6 Cal.4th 539, 556 (1993). Moreover, there is no evidence that
 8 facemasks and ventilators were required when the machine was sold: “*Unless it has*
 9 *been physically altered*, the machine is programmed to stop and will stop when the
 10 door is opened or ventilation is shut off, no matter what mode it is in.” (Urquhart Dec.,
 11 3:7-10.) FRE 401, 402, 403, 602.

12 Separate Statement Paragraph 162: Argumentative, conclusory and no
 13 foundation. FRE 401, 402, 403, 602.

14 Separate Statement Paragraph 164: Objection. Argumentative, conclusory and
 15 no foundation. Dr. Stevick’s opinions about California substantive law are irrelevant
 16 and inadmissible. (Stevick Dec., 5:5-10.) *Pine Creek Group v. Newmont Mining*
 17 *Corp.*, 352 F.Supp.2d 1037, 1046 (D. Ariz. 2005) (expert from providing testimony
 18 regarding “the law that governs this case.”) Under California law, misuse must be
 19 “reasonably foreseeable,” and removing safety devices from a machine including door
 20 interlocks and air sensors is not. *Cronin v. J.B.E. Olson Corp.* 8 Cal.3d 121, 126
 21 (1972).

22 Separate Statement Paragraph 165: Argumentative, conclusory and no
 23 foundation. FRE 401, 402, 403, 602.

24 Separate Statement Paragraph 166: Argumentative, conclusory and no
 25 foundation. FRE 401, 402, 403, 602.

26 Separate Statement Paragraph 167: Objection. Argumentative, conclusory and
 27 no foundation. Not relevant to PVA’s statute of limitations defense or plaintiffs’ strict
 28 product liability cause of action or failure to warn claims. FRE 401, 402, 403, 602.

1 Separate Statement Paragraph 168: Objection. Argumentative, conclusory and
 2 no foundation. When it was sold, the PVA 350 was equipped with both door
 3 interlocks and air flow sensors. (UF 12; Urquhart Dec., 2:23-3:6, 21, 86, 99, 130.)
 4 PVA's 2009 sales records cited in Undisputed Fact 12 document a pre-sale "safety
 5 check" which confirmed that (1) "All interlocks tested and confirmed operational," and
 6 (2) "low level exhaust sensor tested and confirmed operational." (Urquhart Dec., 21.)
 7 Neither plaintiff nor Dr. Stevick have any idea how PVA configured its machine in
 8 2009 and Stevick's testimony that the machine's "interlocks" and "air flow sensors"
 9 were not present proves that it had been altered after it was sold which is completely
 10 irrelevant to plaintiff's negligence and product liability claims against PVA. (Stevick
 11 Dec., 6:1-7.) Notably, Dr. Stevick has never examined or tested the machine at issue
 12 in this case, or any PVA 350 in any way. (Stevick Dec., 3:15-17.) In contrast, PVA's
 13 Director of Applications Engineering, Jonathan Urquhart, actually does have personal
 14 knowledge about what the machine was like in 2009 and there is no competent
 15 evidence which challenges that testimony.

16 Dr. Stevick's opinions are also irrelevant because plaintiffs do not make these
 17 product defect claims in the complaint. Their sole claim in the complaint, which was
 18 the basis for PVA's motion for summary judgment, was that the PVA 350 lacked a
 19 warning that the machine was "designed to continue to spray chemicals even when the
 20 ventilation/exhaust is not in operation." (Catalona Dec., 58:22-25.) "On information
 21 and belief, to add the automatic shutoff, PVA only needs to include an airflow sensor
 22 or something similar." (Catalona Dec., 58:26-27.)

23 Plaintiffs have never alleged other safety features could have avoided plaintiffs'
 24 injuries. If they had, PVA would have addressed them in its motion for summary
 25 judgment. For example, Dr. Stevick states without basis that the PVA 350 did not
 26 have a camera. When it was sold, the machine did have a camera had a "slim
 27 programming camera with crosshair generator." (Urquhart Dec., 12, 16.) Plaintiffs'
 28 new allegations which vary from the complaint are irrelevant and may not defeat

1 summary judgment. *Navajo Nation v. U.S. Forest Serv.*, 535 F.3d 1058, 1080 (9th Cir.
 2 2008) (prohibiting oppositions to summary judgment motions based on factual theories
 3 not alleged in the complaint.) FRE 401, 402, 403, 602.

4 Separate Statement Paragraph 169: Objection. Argumentative, conclusory and
 5 no foundation. The manual states that toxic materials could be used with the machine
 6 and that users should consult the MSDS sheets for those materials. The machine also
 7 ensured that it had adequate ventilation and could not be used without breathing
 8 protection when it was sold. Dr. Stevick has no foundation to testify regarding how
 9 the machine was configured when it was sold in 2009. His opinions are based on Mr.
 10 Juarez's testimony who first used the machine in 2012. Notably, Dr. Stevick has never
 11 examined or tested the machine at issue in this case, or any PVA 350 in any way.
 12 (Stevick Dec., 3:15-17.)

13 The adequacy of PVA's warnings are immaterial and irrelevant because plaintiff
 14 never read PVA's manual and there is therefore "no conceivable causal connection
 15 between the representations or omissions that accompanied the product and plaintiff's
 16 injury." *Ramirez v. Plough, Inc.*, 6 Cal.4th 539, 556 (1993). Moreover, there is no
 17 evidence that facemasks and ventilators were required when the machine was sold:
 18 "Unless it has been physically altered, the machine is programmed to stop and will
 19 stop when the door is opened or ventilation is shut off, no matter what mode it is in."
 20 (Urquhart Dec., 3:7-10.) FRE 401, 402, 403, 602.

21 Separate Statement Paragraph 170: Objection. Argumentative, conclusory and
 22 no foundation. There is no evidence that the machine could "leak toxic chemicals or
 23 exposure could occur while using the PVA 350" when the safety features were in
 24 place.

25 The adequacy of PVA's warnings are immaterial because plaintiff never read
 26 PVA's manual and there is therefore "no conceivable causal connection between the
 27 representations or omissions that accompanied the product and plaintiff's injury."
 28 *Ramirez v. Plough, Inc.*, 6 Cal.4th 539, 556 (1993). Moreover, there is no evidence that

1 facemasks and ventilators were required when the machine was sold: “*Unless it has*
 2 *been physically altered*, the machine is programmed to stop and will stop when the
 3 door is opened or ventilation is shut off, no matter what mode it is in.” (Urquhart Dec.,
 4 3:7-10.) FRE 401, 402, 403, 602.

5 Separate Statement Paragraph 171: Objection. Argumentative, conclusory and
 6 no foundation. There is no evidence that breathing protection would have been
 7 necessary when the safety features were in place.

8 The adequacy of PVA’s warnings are immaterial because plaintiff never read
 9 PVA’s manual and there is therefore “no conceivable causal connection between the
 10 representations or omissions that accompanied the product and plaintiff’s injury.”
 11 *Ramirez v. Plough, Inc.*, 6 Cal.4th 539, 556 (1993). Moreover, there is no evidence that
 12 facemasks and ventilators were required when the machine was sold: “*Unless it has*
 13 *been physically altered*, the machine is programmed to stop and will stop when the
 14 door is opened or ventilation is shut off, no matter what mode it is in.” (Urquhart Dec.,
 15 3:7-10.) FRE 401, 402, 403, 602.

16 Separate Statement Paragraph 172: Objection. Argumentative, conclusory and
 17 no foundation. Dr. Stevick’s opinions about California substantive law are irrelevant
 18 and inadmissible. (Stevick Dec., 5:5-10.) *Pine Creek Group v. Newmont Mining*
 19 *Corp.*, 352 F.Supp.2d 1037, 1046 (D. Ariz. 2005) (expert from providing testimony
 20 regarding “the law that governs this case.”) FRE 401, 402, 403, 602.

21 Separate Statement Paragraph 173: Objection. Argumentative, conclusory and
 22 no foundation. Dr. Stevick’s opinions about California substantive law are irrelevant
 23 and inadmissible. (Stevick Dec., 5:5-10.) *Pine Creek Group v. Newmont Mining*
 24 *Corp.*, 352 F.Supp.2d 1037, 1046 (D. Ariz. 2005) (expert from providing testimony
 25 regarding “the law that governs this case.”) FRE 401, 402, 403, 602.

26 Separate Statement Paragraph 174: Objection. Argumentative, conclusory and
 27 no foundation. Dr. Stevick’s opinions about California substantive law are irrelevant
 28 and inadmissible. (Stevick Dec., 5:5-10.) *Pine Creek Group v. Newmont Mining*

1 *Corp.*, 352 F.Supp.2d 1037, 1046 (D. Ariz. 2005) (expert from providing testimony
2 regarding “the law that governs this case.”) FRE 401, 402, 403, 602.

3 Separate Statement Paragraph 175: Objection. Argumentative, conclusory and
4 no foundation. Dr. Stevick’s opinions about California substantive law are irrelevant
5 and inadmissible. (Stevick Dec., 5:5-10.) *Pine Creek Group v. Newmont Mining*
6 *Corp.*, 352 F.Supp.2d 1037, 1046 (D. Ariz. 2005) (expert from providing testimony
7 regarding “the law that governs this case.”) FRE 401, 402, 403, 602.

8 Separate Statement Paragraph 176: Objection. Argumentative, conclusory and
9 no foundation. Dr. Stevick’s opinions about California substantive law are irrelevant
10 and inadmissible. (Stevick Dec., 5:5-10.) *Pine Creek Group v. Newmont Mining*
11 *Corp.*, 352 F.Supp.2d 1037, 1046 (D. Ariz. 2005) (expert from providing testimony
12 regarding “the law that governs this case.”) The fact that warnings in PVA’s manual
13 were not physically “on the product” is irrelevant. *Temple v. Velcro USA, Inc.*, 148
14 Cal.App.3d 1090, 1094-1095 (1983). FRE 401, 402, 403, 602.

15 Separate Statement Paragraph 177: Objection. Argumentative, conclusory and
16 no foundation. Dr. Stevick’s opinions about California substantive law are irrelevant
17 and inadmissible. (Stevick Dec., 5:5-10.) *Pine Creek Group v. Newmont Mining*
18 *Corp.*, 352 F.Supp.2d 1037, 1046 (D. Ariz. 2005) (expert from providing testimony
19 regarding “the law that governs this case.”) The adequacy of PVA’s warnings are
20 immaterial because plaintiff never read PVA’s manual and there is therefore “no
21 conceivable causal connection between the representations or omissions that
22 accompanied the product and plaintiff’s injury.” *Ramirez v. Plough, Inc.*, 6 Cal.4th
23 539, 556 (1993). FRE 401, 402, 403, 602.

24 Separate Statement Paragraph 178: Objection. Argumentative, conclusory and
25 no foundation. Also immaterial to the issues in PVA’s motion which do not concern
26 plaintiffs’ general negligence claims. FRE 401, 402, 403, 602.

27 Separate Statement Paragraph 179: Objection. Argumentative, conclusory and
28 no foundation. Dr. Stevick’s opinions about California substantive law are irrelevant

1 and inadmissible. (Stevick Dec., 5:5-10.) *Pine Creek Group v. Newmont Mining*
 2 *Corp.*, 352 F.Supp.2d 1037, 1046 (D. Ariz. 2005) (expert from providing testimony
 3 regarding “the law that governs this case.”) FRE 401, 402, 403, 602.

4 Separate Statement Paragraph 180: Objection. Argumentative, conclusory and
 5 no foundation. Also immaterial what was “foreseeable” to PVA which concerns
 6 plaintiffs’ general negligence claims which are not addressed in PVA’s motion. Under
 7 California law, strict liability is prohibited even when it is “foreseeable that the
 8 products will be used together,” unless such use is actually “necessary.” *O’Neil v.*
 9 *Crane Co.*, 53 Cal.4th 335, 361 (2012). Plaintiffs do not address this authority. FRE
 10 401, 402, 403, 602.

11 Separate Statement Paragraph 181: Objection. Argumentative, conclusory and
 12 no foundation. Dr. Stevick’s opinions about California substantive law are irrelevant
 13 and inadmissible. (Stevick Dec., 5:5-10.) *Pine Creek Group v. Newmont Mining*
 14 *Corp.*, 352 F.Supp.2d 1037, 1046 (D. Ariz. 2005) (expert from providing testimony
 15 regarding “the law that governs this case.”) The fact that warnings in PVA’s manual
 16 were not physically “on the product” is irrelevant. *Temple v. Velcro USA, Inc.*, 148
 17 Cal.App.3d 1090, 1094-1095 (1983). FRE 401, 402, 403, 602.

18 Separate Statement Paragraph 182: Objection. Argumentative and conclusory.
 19 FRE 401, 402, 403.

20 Separate Statement Paragraph 183: Objection. Argumentative, conclusory and
 21 no foundation. Also immaterial whether PVA was “aware” which concerns plaintiffs’
 22 general negligence claims which are not addressed in PVA’s motion. Under California
 23 law, strict liability is prohibited even when it is “foreseeable that the products will be
 24 used together,” unless such use is actually “necessary.” *O’Neil v. Crane Co.*, 53
 25 Cal.4th 335, 361 (2012). Plaintiffs do not address this authority. FRE 401, 402, 403,
 26 602.

27 Separate Statement Paragraph 184: Irrelevant. This evidence is relevant to
 28 plaintiffs’ general negligence claims which are not addressed in PVA’s motion. Under

1 California law, strict liability is prohibited even when it is “foreseeable that the
 2 products will be used together,” unless such use is actually “necessary.” *O’Neil v.*
 3 *Crane Co.*, 53 Cal.4th 335, 361 (2012). Plaintiffs do not address this authority. FRE
 4 401, 402.

5 Separate Statement Paragraph 185: Irrelevant. This evidence is relevant to
 6 plaintiffs’ general negligence claims which are not addressed in PVA’s motion. Under
 7 California law, strict liability is prohibited even when it is “foreseeable that the
 8 products will be used together,” unless such use is actually “necessary.” *O’Neil v.*
 9 *Crane Co.*, 53 Cal.4th 335, 361 (2012). Plaintiffs do not address this authority. FRE
 10 401, 402.

11 Separate Statement Paragraph 186: Irrelevant. This evidence is relevant to
 12 plaintiffs’ general negligence claims which are not addressed in PVA’s motion. Under
 13 California law, strict liability is prohibited even when it is “foreseeable that the
 14 products will be used together,” unless such use is actually “necessary.” *O’Neil v.*
 15 *Crane Co.*, 53 Cal.4th 335, 361 (2012). Plaintiffs do not address this authority. FRE
 16 401, 402.

17 Separate Statement Paragraph 187: Irrelevant. This evidence is relevant to
 18 plaintiffs’ general negligence claims which are not addressed in PVA’s motion. Under
 19 California law, strict liability is prohibited even when it is “foreseeable that the
 20 products will be used together,” unless such use is actually “necessary.” *O’Neil v.*
 21 *Crane Co.*, 53 Cal.4th 335, 361 (2012). Plaintiffs do not address this authority. FRE
 22 401, 402.

23 Separate Statement Paragraph 188: Objection. Argumentative and irrelevant.
 24 This misleading, argumentative characterization is only relevant to plaintiffs’ general
 25 negligence claims which are not addressed in PVA’s motion. Under California law,
 26 strict liability is prohibited even when it is “foreseeable that the products will be used
 27 together,” unless such use is actually “necessary.” *O’Neil v. Crane Co.*, 53 Cal.4th 335,
 28 361 (2012). Plaintiffs do not address this authority. FRE 401, 402, 403.

1 Separate Statement Paragraph 189: Objection. Argumentative and irrelevant.
 2 This misleading, argumentative characterization is only relevant to plaintiffs' general
 3 negligence claims which are not addressed in PVA's motion. PVA does not dispute
 4 what is stated in the documents which is immaterial to the issues before this Court.
 5 FRE 401, 402, 403.

6 Separate Statement Paragraph 190:
 7 Objection. Argumentative and irrelevant. This misleading, argumentative
 8 characterization is only relevant to plaintiffs' general negligence claims which are not
 9 addressed in PVA's motion. PVA does not dispute what is stated in the documents
 10 which is immaterial to the issues before this Court. FRE 401, 402, 403.

11 Separate Statement Paragraph 191: Objection. Argumentative and irrelevant.
 12 This misleading, argumentative characterization is only relevant to plaintiffs' general
 13 negligence claims which are not addressed in PVA's motion. PVA does not dispute
 14 what is stated in the documents which is immaterial to the issues before this Court.
 15 FRE 401, 402, 403.

16 Separate Statement Paragraph 192: Objection. Argumentative and irrelevant.
 17 This misleading, argumentative characterization is only relevant to plaintiffs' general
 18 negligence claims which are not addressed in PVA's motion. PVA does not dispute
 19 what is stated in the documents which is immaterial to the issues before this Court.
 20 FRE 401, 402, 403.

21 Separate Statement Paragraph 193: Objection. Argumentative and irrelevant.
 22 This misleading, argumentative characterization is only relevant to plaintiffs' general
 23 negligence claims which are not addressed in PVA's motion. PVA does not dispute
 24 what is stated in the documents which is immaterial to the issues before this Court.
 25 FRE 401, 402, 403.

26 Separate Statement Paragraph 194: Objection. Argumentative and irrelevant.
 27 This misleading, argumentative characterization is only relevant to plaintiffs' general
 28 negligence claims which are not addressed in PVA's motion. PVA does not dispute

1 what is stated in the documents which is immaterial to the issues before this Court.
 2 Under California law, strict liability is prohibited even when it is “foreseeable that the
 3 products will be used together,” unless such use is actually “necessary.” *O’Neil v.*
 4 *Crane Co.*, 53 Cal.4th 335, 361 (2012). Plaintiffs do not address this authority. FRE
 5 401, 402, 403.

6 Separate Statement Paragraph 195: Objection. Argumentative and irrelevant.
 7 This misleading, argumentative characterization is only relevant to plaintiffs’ general
 8 negligence claims which are not addressed in PVA’s motion. PVA does not dispute
 9 what is stated in the documents which is immaterial to the issues before this Court.
 10 Under California law, strict liability is prohibited even when it is “foreseeable that the
 11 products will be used together,” unless such use is actually “necessary.” *O’Neil v.*
 12 *Crane Co.*, 53 Cal.4th 335, 361 (2012). Plaintiffs do not address this authority. FRE
 13 401, 402, 403.

14 Separate Statement Paragraph 196: Objection. Argumentative and irrelevant.
 15 This misleading, argumentative characterization is only relevant to plaintiffs’ general
 16 negligence claims which are not addressed in PVA’s motion. PVA does not dispute
 17 what is stated in the documents which is immaterial to the issues before this Court.
 18 Under California law, strict liability is prohibited even when it is “foreseeable that the
 19 products will be used together,” unless such use is actually “necessary.” *O’Neil v.*
 20 *Crane Co.*, 53 Cal.4th 335, 361 (2012). Plaintiffs do not address this authority. FRE
 21 401, 402, 403.

22 Separate Statement Paragraph 197: Objection. Argumentative, ambiguous and
 23 misleading. PVA’s 2009 sales records showed that a safety check was performed
 24 which showed that “low level exhaust sensor tested and confirmed operational.”
 25 (Urquhart Dec., 21.) FRE 401, 402, 403.

26 Separate Statement Paragraph 199: Irrelevant what safety items are included
 27 “automatically.” The PVA 350 at issue in this case included a camera, flow
 28 monitoring, door interlocks and other safety features when it was sold. (UF 12;

1 Urquhart Dec., 2:23-3:6, 21, 86, 99, 130.) FRE 401-403.

2 Separate Statement Paragraph 200: Irrelevant. There is no evidence that a
3 ventilator would have been needed when PVA's machine was sold and all necessary
4 safety features were intact. (UF 12; Urquhart Dec., 2:23-3:6, 21, 86, 99, 130.) FRE
5 401-403.

6 Separate Statement Paragraph 201: Irrelevant because it is undisputed that the
7 PVA 350 sold to SpaceX had air flow monitors. (UF 12; Urquhart Dec., 2:23-26, 21.)
8 Plaintiffs "undisputed fact" is highly misleading because this email **refers to a**
9 **product that was being designed in December of 2014**, several months after Ruben
10 Juarez stopped working at SpaceX. This machine was actually **sold in 2015** and is a
11 completely different product from the PVA 350, utilized "meter mix" technology
12 which was not used in the PVA 350, and had a different model number, MX4000-VR.
13 (Loftus Brewer Dec., 462-463; Urquhart Dec., 34, 41.) As shown by the referenced
14 email, PVA recommended the use of flow monitors on this product too and there is no
15 indication that flow monitors were not used on either this product or the PVA 350.
16 FRE 401-403.

17 Separate Statement Paragraph 202: Objection. Plaintiffs' characterization of
18 this documents is highly misleading. The document is dated May 1, 2009 and includes
19 the following action items: (1) "fix or replace lexan side" and (2) "**label** camera cable
20 @ rear of machine." It does not state "add" camera cable. In any event, next to these
21 action items, it states they were "completed" by PVA workers "DL" and "DP" on May
22 14, 2009. (Loftus Brewer Dec., 155.) The product was then shipped to SpaceX on
23 May 22, 2009. (Urquhart Dec., 23.) PVA does not dispute what is actually stated in
24 these documents.

25 Separate Statement Paragraph 203: Irrelevant what "not all PVA 350s have" or
26 do not have. On the PVA 350 at issue in this case, which was customized for SpaceX,
27 the "door bypass switch" did not shut off any safety features of the machine. (UF 12;
28 Urquhart Dec., 2:23-3:6, 21, 86, 99, 130.)

1 Separate Statement Paragraph 206: Irrelevant because plaintiff never read
 2 PVA's manual and there is therefore "no conceivable causal connection between the
 3 representations or omissions that accompanied the product and plaintiff's injury."
 4 *Ramirez v. Plough, Inc.*, 6 Cal.4th 539, 556 (1993). Moreover, there is no evidence that
 5 facemasks and ventilators were required when the machine was sold: "*Unless it has*
 6 *been physically altered*, the machine is programmed to stop and will stop when the
 7 door is opened or ventilation is shut off, no matter what mode it is in." (Urquhart Dec.,
 8 3:7-10.)

9 Separate Statement Paragraph 208: Objection. Plaintiff's characterization is
 10 misleading and there is no foundation for plaintiff's counsel's suggestions about this
 11 document. Essentially nothing is checked on this document which on its face shows it
 12 was never completed. The relevant pre-sale checklist which immediately precedes this
 13 document in PVA's document production (PVA 0270 to PVA 0271) states that all
 14 safety systems for the machine were checked and confirmed. The undisputed evidence
 15 establishes that the PVA manual was sent to SpaceX on or before June 24, 2009
 16 (Urquhart Dec., 2:15-22, 60, 61), and Plaintiffs elsewhere acknowledge it was sent.
 17 (Pl. Sep. Stmt. 204.)

18 Separate Statement Paragraph 209: Undisputed but immaterial. "Unless it has
 19 been physically altered, the machine is programmed to stop and will stop when the
 20 door is opened or ventilation is shut off, no matter what mode it is in." (Urquhart Dec.,
 21 3:7-10.)

22
 23 DATED: September 17, 2018

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 17, 2018, a true and correct copy of **DEFENDANT PRECISION VALVE & AUTOMATION, INC.'S OBJECTIONS TO EVIDENCE IN SUPPORT MOTION FOR SUMMARY JUDGMENT** has been served via ECF upon all counsel of record in the Court's electronic filing system.

By: /s/ Jerry Dumlao

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